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UNITED STATES DEPARTMENT OF AGRICULTURE
DIVISION OF MARKETING AND MARKETING AGREEMENTS
WASHINGTON, D. C.

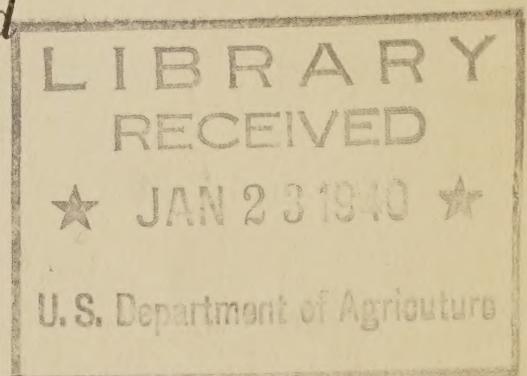
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RULES AND REGULATIONS

OF

*Division of Marketing and
Marketing Agreements*

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An advance print of Chapter IX, Title 7, of the
Code of Federal Regulations

Effective June 1, 1938

CHAPTER IX—DIVISION OF MARKETING AND MARKETING AGREEMENTS, AGRICULTURAL ADJUSTMENT ADMINISTRATION

DEPARTMENT OF AGRICULTURE

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| 901 Walnuts grown in California, Oregon, and Washington | 912 Milk in Dubuque, Iowa, marketing area |
| 902 Oranges and grapefruit grown in California and Arizona | 913 Milk in Kansas City, Kansas, marketing area |
| 903 Milk in St. Louis, Missouri, marketing area | 914 Onions grown in Utah |
| 904 Milk in Greater Boston, Massachusetts, marketing area | 915 Grapefruit and oranges grown in Cameron, Hidalgo, and Willacy Counties, Texas |
| 905 Milk in Fall River, Massachusetts, marketing area | 916 Cauliflower grown in Oregon |
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| 908 Watermelons grown in Florida, Georgia, North Carolina, and South Carolina | 921 Celery grown in Florida |
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EDITORIAL NOTE: For list of abbreviations used in this chapter, see note to § 900.1.

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SUBPART—PROCEDURE GOVERNING HEARINGS UPON MARKETING ORDERS AND AGREEMENTS

Section 900.1 Definitions. As used in the regulations in this subpart:

- (a) The term "Act" means the Agricultural Adjustment Act, approved May 12, 1933 (48 Stat. 31; 7 U.S.C. Chapter 26), as amended.
- (b) The term "Secretary" means the Secretary of Agriculture of the United States.
- (c) The term "Department" means the United States Department of Agriculture.
- (d) The term "hearing clerk" means the hearing clerk, Office of the Solicitor, United States Department of Agriculture, Washington, D. C.
- (e) The term "marketing agreement" means any marketing agreement or any amendment thereto which may be entered into pursuant to section 8b of the Act (49 Stat. 753, 50 Stat. 246; 7 U.S.C., Sup., 608b), or any marketing agreement or amendment thereto entered into pursuant to sections 56–60, inclusive, of the Act of August 24, 1935 (49 Stat. 781; 7 U.S.C., Sup., 851–855), relating to anti-hog-cholera serum, and hog-cholera virus.
- (f) The term "order" means any order or any amendment thereto which may be issued pursuant to sections 8 (c) or 10 (i) of the Act (49 Stat. 753, 768, as amended; 7 U.S.C., Sup., 608c, 610 (i)) or any order or amendment thereto issued pursuant to sections 56–60, inclusive of the Act of August 24, 1935, relating to anti-hog-cholera serum and hog-cholera virus.
- (g) The term "Federal Register" means the publication provided for by the Act of July 26, 1935 (49 Stat. 500; 44 U.S.C., Sup., 301–314); provisions in subpart relating to the Federal Register shall not be applicable or of any effect until the commencement of said publication.*† [Sec. 100]

* §§ 900.1 to 900.170, inclusive, issued under the authority contained in sec. 10 (c), 48 Stat. 37, secs. 1, 2, 50 Stat. 246, 248; 7 U.S.C., Sup., 610 (c).

†The source of §§ 900.1 to 900.20, inclusive, (except for amendments noted in the text,) is Regulations governing notice and opportunity for hearing upon marketing agreements and orders and their execution and issuance, Department of Agriculture, Aug. 30, 1935. (Gen. Regs., AAA, Series A)

ABBREVIATIONS: The following abbreviations are used in this chapter:

Gen. Regs. General regulations, Secretary of Agriculture.
Order Ser. Order series.

900.2 General. The regulations in this subpart make provision for the due notice and opportunity for hearing required by law as a condition precedent to the execution of a marketing agreement or the issuance of an order. In the event that a hearing is to be held at the same time and place upon a proposed marketing agreement and a proposed order, both of which relate to the regulation of the same commodity in the same manner and with respect to persons in the same classes of industrial or commercial activity, a single notice and opportunity for hearing with reference to both the proposed marketing agreement and the proposed order shall be sufficient.*† [Sec. 200]

900.3 Contents of notice of hearing. The notice shall contain a brief summary of the major provisions of the proposed marketing

*†For statutory and source citations, see note to § 900.1.

agreement or order, and shall state the industry, area, and class of persons to be regulated, the time and place of such hearing, and the place where copies of the proposed marketing agreement and/or order may be obtained or examined.*† [Sec. 201 (A)]

900.4 Manner of giving notice. The hearing clerk shall give such notice in the following manner:

(a) By posting a copy of such notice on the official bulletin board of the Department at Washington, D. C.

(b) By publication of such notice in the Federal Register, when required or authorized to be published therein.

(c) By issuing press releases containing or describing such notice to such newspapers in the areas to be affected by the proposed marketing agreement and/or order as will reasonably tend to bring notice to all interested parties including the handlers, producers with which such handlers deal, and other persons likely to be affected thereby.

(d) By forwarding copies of such notice addressed to governors of such of the several States of the United States and to executive heads of such of the Territories and possessions of the United States as the Secretary, or such officer or employee of the Department as he may designate for this purpose, having due regard for the subject matter of such proposed hearing and the public interest, shall determine should be notified.

(e) In addition, notice may also be given by mailing, telegraphing, telephoning, or in any other manner transmitting, oral or written information of such notice to handlers likely to be eligible to enter into the proposed marketing agreement or likely to be regulated by the order, and to producer associations in the area specified in the proposed marketing agreement or order, where the names and addresses of such handlers and producer associations are known to the Secretary, or by using such other means as are calculated to give actual notice to the persons to be regulated by the proposed marketing agreement or order.

(f) Proof of the giving of notice hereunder shall be made by the affidavit of the employee of the Department who gave such notice, or who has actual personal knowledge of the facts of the giving of such notice. Such affidavit shall be filed in the office of the hearing clerk and the filing thereof noted on a docket. Whenever such affidavit has been filed it shall constitute a paper or document of the Department within the meaning of title 28, section 661, of the United States Code.

(g) Failure to give notice by any one or more of the means herein provided shall not invalidate any marketing agreement or order nor limit its application, provided notice otherwise sufficient in law has been given.*† [Sec. 201 (B)]

900.5 Time of notice. Such notice of hearing shall be given at least fifteen (15) days prior to the date fixed for the hearing set forth in said notice, unless the Secretary shall determine that an emergency exists which requires a shorter period of notice, in which case the period of notice will be that which the Secretary may determine to be reasonable in the circumstances; Provided, That if such notice of hearing is required or authorized to be published in the Federal

Register, due notice shall be deemed to have been given if such notice is published in the Federal Register at such time that the period of time elapsing between the publication and the date fixed in such notice for the hearing shall be not less than fifteen (15) days, or if the Secretary determines that an emergency exists which requires a shorter period of notice, then such intervening period shall be that which the Secretary may determine to be reasonable in the circumstances. In the case of hearings on amendments to marketing agreements or orders, notice shall be given at least three (3) days prior to the date fixed for hearing; Provided, That if notice is required or authorized to be published in the Federal Register, due notice shall be deemed to have been given if such notice is published in the Federal Register at such time that the period between the publication and the date fixed in such notice for the hearing shall be not less than three (3) days.* [Sec. 202, Gen. Regs., Series A, as amended Apr. 10, 1936]

900.6 Proposal of marketing agreement and order. No hearing will be held upon a proposed marketing agreement and/or order unless the proposed marketing agreement and/or order has been reduced to writing and filed in the office of the hearing clerk, where it shall be immediately available for inspection. Where persons other than the Secretary propose a marketing agreement, they shall file, together with at least three copies of the proposed marketing agreement, a written application requesting the Secretary to determine whether a hearing shall be called on such proposed marketing agreement. Copies of a proposed marketing agreement or order upon which a hearing has been called shall be available to the public in the office of the hearing clerk as soon as possible after the date when the notice with respect to a hearing thereon is given and copies shall also be made available at such hearing.*† [Sec. 203]

900.7 Description and powers of presiding officer. Every such hearing shall be conducted by a presiding officer, who shall be the Secretary or such officer or employee of the Department of Agriculture as the Secretary may designate for the purpose, and any such designation may be made or revoked by the Secretary at any time. Such hearing shall be conducted in a manner to be determined by the presiding officer, and such presiding officer, by virtue of his designation as such, shall, subject to the provisions of the Act and applicable regulations issued pursuant thereto, be deemed to be an officer duly authorized by the Secretary, for the purposes and within the purview of §§ 900.160–900.170 and shall have all the powers granted to such officer in connection with any hearing hereunder.*† [Sec. 204]

900.8 Continuance of hearings. Every such hearing shall be held at the time and place set forth in the notice of hearing but may at such time and place be continued from day to day or adjourned to a later day or to a different place without notice other than the announcement thereof at the hearing by the presiding officer.*† [Sec. 205]

900.9 Submission of evidence. All persons, including the Secretary and those appearing on his behalf, shall be given an opportunity

*†For statutory and source citations, see note to § 900.1.

to offer evidence in favor of or against the issuance of the proposed marketing agreement or order, or in favor of or against any provision thereof. All witnesses shall be sworn or make affirmation, after which they shall state their name, address, occupation and representation, and also such other information, orally or in writing, as the presiding officer may request. Where necessary, in order to prevent undue prolongation of the hearing, the presiding officer may limit the number of times any witness may testify, or the length of time any witness may consume in giving testimony, or the length of time to be consumed in the asking of questions. The presiding officer shall confine the evidence to relevant matter. Opinion evidence shall be admitted where the presiding officer is satisfied that the witness is qualified to give such evidence.*† [Sec. 206]

900.10 Order of procedure. The presiding officer shall read the notice of hearing and the designation of the presiding officer, and shall then outline briefly the procedural rules to be followed. The presiding officer shall then cause the proposed marketing agreement or proposed order, or a summary of the provisions thereof, to be read without argument or comment. In case the hearing is being held simultaneously upon a marketing agreement and order, a reading of either the marketing agreement or order or a summary thereof shall be sufficient; and testimony, suggested additions, alterations, or modifications, relating to either the proposed marketing agreement or order, may be considered as offered with respect to both the marketing agreement and order insofar as they are relevant.

Evidence shall then be received regarding the general economic conditions existing in the industry and the specific factors responsible for the marketing conditions which may or may not necessitate regulation in order to effectuate the declared policy of the Act. No evidence shall be introduced at this stage of the hearing as to any specific provisions of the proposed marketing agreement or order.

Evidence shall then be received with respect to specific terms and conditions of the marketing agreement or order, which shall be read and considered section by section in a sequence to be determined by the presiding officer, and additions, alterations or modifications thereto may be proposed at this time and insofar as practicable shall be submitted in writing.*† [Sec. 207]

900.11 Transcript of testimony. Testimony given at a hearing shall be reported verbatim. All written statements, charts, tabulations, or similar data offered in evidence at the hearing shall, after identification by the proponent and upon a satisfactory showing of the authenticity, relevancy, and materiality of the contents thereof, be numbered and received in evidence and be made a part of the record. Such exhibits shall, if possible under the circumstances, be offered in quadruplicate and in typewritten, printed, or mimeographed form. In the event of the nonavailability of the required number of copies, the presiding officer shall exercise his discretion as to whether said exhibit shall be read into the transcript of testimony or whether additional copies shall be required to be submitted within a time to be specified by the presiding officer. Where the testimony of a witness refers to an existing statute, report, or pub-

lished document, either of a public or private nature, the presiding officer shall, after inquiry relating to and identification of said document, determine whether the same shall be produced at the hearing and physically be made a part of the record or whether it shall be incorporated into the record of the hearing merely by reference. If in the opinion of the presiding officer a voluminous document sought to be introduced as evidence would burden the record, he shall have the right to order the relevant part of such document made a part of the record by reference; and in such case the presiding officer shall direct that the same be transmitted to the hearing clerk with instructions to preserve it as a part of the record in said case.*† [Sec. 208]

900.12 Written argument. The presiding officer shall announce at the hearing a period of time within which written arguments based solely upon the evidence received at the hearing may be filed in the office of the hearing clerk.*† [Sec. 209]

900.13 The record. The presiding officer shall notify the hearing clerk of the close of a hearing as soon as possible thereafter and of the time for filing written arguments and shall furnish the hearing clerk with such other information as may be necessary. As soon as possible after the hearing the presiding officer shall transmit to the hearing clerk an original and three copies of the transcript of the testimony and the original and all copies of the exhibits not already on file in the office of the hearing clerk. He shall attach to the original transcript of testimony his certificate stating that the transcript is a true transcript of the testimony given at the hearing except in such particulars as he shall specify; and that the exhibits transmitted are all the exhibits as introduced at the hearing with such exceptions as he shall specify. A copy of such certificate shall be attached to each of the copies of the transcript of testimony. In accordance with such certificate the hearing clerk shall note upon each copy of the transcript each correction detailed therein by adding or crossing out (but without obscuring the text as originally transcribed) at the appropriate place any words necessary to make the same conform to the correct meaning.*† [Sec. 210]

900.14 Copies of record. Any person desiring a copy of the transcript of the testimony or of any filed written exhibit or written argument shall be entitled to the same upon application to the hearing clerk and upon payment of fees therefor as provided by the regulations of the Department.*† [Sec. 211]

CROSS REFERENCE: For schedules of fees for copies, see § 1.1531.

900.15 Notice of issuance of order. Public notice of the issuance of any order made pursuant to the regulations in this subpart shall be given at least three days prior to the effective date thereof by posting a copy of such order on the official bulletin board of the Department in Washington, D. C.; by filing with the Division of the Federal Register a copy of such order for publication in the Federal Register when required or authorized to be published therein; by issuing press releases to such newspapers in the areas to be affected by the proposed order as will reasonably tend to bring notice to the persons to be affected thereby, describing the industry and/or area covered

*†For statutory and source citations, see note to § 900.1.

thereby and giving the date of its approval by the Secretary, the date on which it is to become effective, and the information as to where copies thereof may be obtained; and in addition to the above, notices thereof may be sent to handlers likely to be subject thereto, whose names and addresses are known to the Secretary. Failure to give notice as provided in this section shall not invalidate the order or limit its application.

A copy of such order when issued shall be filed as a public record in the office of the hearing clerk. Any person shall be entitled to copies of such order upon application to the hearing clerk.

The Secretary may determine, in connection with any such notice, that an emergency exists which requires a shorter period of notice, in which case the period of notice shall be that which he determines to be reasonable under the circumstances.* [Sec. 300, Gen. Regs., Series A, as amended Apr. 10, 1936]

900.16 Tentative approval and filing of marketing agreement. As soon as practicable after the conclusion of any hearing on a proposed marketing agreement, the Secretary shall, if he decides to approve a marketing agreement, announce his tentative approval thereof. A copy of such marketing agreement shall thereupon be filed in the office of the hearing clerk and be available for public inspection and execution by the persons eligible to become parties thereto.* [Sec. 301, Gen. Regs., Series A, as amended Apr. 10, 1936]

900.17 Notice of marketing agreement. Whenever, pursuant to a determination of the Secretary, any marketing agreement becomes effective, a copy thereof shall thereupon be filed in the office of the hearing clerk and be available for public inspection. The Secretary shall mail, or transmit by any other means, notices to the signatories thereto advising them of the effective date thereof. A marketing agreement shall be effective and binding upon any party thereto even though such party did not receive the notice herein provided, or the Secretary failed to give such notice.* [Sec. 302, Gen. Regs., Series A, as amended Apr. 10, 1936]

900.18 Copies of marketing agreement. Any person shall be entitled to a copy of a marketing agreement which has been tentatively or finally approved upon application to the hearing clerk.*† [Sec. 303]

900.19 Construction. Nothing contained in the regulations in this subpart shall be, or shall be construed to be, in derogation or modification of the rights of the Secretary or of the United States to exercise any jurisdiction or powers granted by the Act, or otherwise, and/or in accordance with such jurisdiction and powers, to act in the premises whenever such action is deemed advisable.*† [Sec. 400]

900.20 Notice of regulations. Public notice of the issuance of the regulations in this subpart shall be given by, (a) posting a copy of such regulations on the official bulletin board of the Department at Washington, D. C.; (b) issuing a press release containing copies of such regulations or descriptions thereof and making available in the office of the hearing clerk copies of such regulations for the press;

and (c) forwarding by mail copies of such regulations to the governors of the several States of the United States and to the executive heads of the Territories of the United States.*† [Sec. 600]

SUBPART—REGULATIONS GOVERNING PETITIONS AND HEARINGS CONCERNING MODIFICATION OF, OR EXEMPTION FROM, ORDERS

900.100 Definitions. As used in the regulations in this subpart:

(a) The term "Act" means the Agricultural Adjustment Act, approved May 12, 1933 (48 Stat. 31; 7 U.S.C. Chapter 26), as amended.

(b) The term "Secretary" means the Secretary of Agriculture of the United States.

(c) The term "Department" means the United States Department of Agriculture.

(d) The term "hearing clerk" means the hearing clerk, Office of the Solicitor, United States Department of Agriculture, Washington, D. C.

(e) The term "order" means any order, or any amendment thereto, which may be issued by the Secretary pursuant to sections 8c or 10 (i) of the Act (49 Stat. 753, 767, as amended; 7 U.S.C., Sup., 608c, 610 (i)), or pursuant to sections 56–60, inclusive, of an Act of Congress approved August 24, 1935 (49 Stat. 781; 7 U.S.C., Sup., 851–855), relating to handlers of anti-hog-cholera serum and hog-cholera virus.

(f) The term "handler" means any processor, association of producers, or other individual, partnership, corporation, association, or other business unit engaged in the handling of any agricultural commodity or product thereof specified in subsection (2) of section 8c of the Act, or in the handling of anti-hog-cholera serum or hog-cholera virus, and subject to an order issued by the Secretary.*†† [Sec. 100]

*†The source of §§ 900.100 to 900.122, inclusive, is Regulations governing petitions and hearings under subsection (15)(A) of section 8c of the Agricultural Adjustment Act relating to modification of, or exemption from, orders, Department of Agriculture, Oct. 24, 1935. (Gen. Regs., AAA, Series D)

900.101 Filing of petitions and interrogatories. All written petitions filed by handlers with the Secretary pursuant to subsection (15) (A) of section 8c of the Act (49 Stat. 760, 50 Stat. 246; 7 U.S.C., Sup., 608c (15)) shall be addressed to the Secretary and filed, in triplicate, in the office of the hearing clerk in the Department, Washington, D. C., and shall there be available for public inspection.*†† [Sec. 200]

900.102 Contents of petition. Such written petitions shall conform to the requirements of the Act and should contain:

The correct name, address, and principal place of business of the petitioner. If petitioner is incorporated, such fact should be stated together with the name of the State of incorporation, the date of incorporation, and the names, addresses and respective positions held by its officers and directors; if an unincorporated association, the names and addresses of its officers, and the respective positions held by them; if a partnership, the name and address of each partner. A statement of the specific terms or provisions of the order which are complained of.

*†For statutory and source citations, see note to § 900.1.
††For source citation, see note to § 900.100.

A full statement of the facts (avoiding a mere recitation of detailed evidence) upon which the petition is based, and which it is desired that the Secretary consider, setting forth clearly and concisely the nature of the petitioner's business and the manner in which it is, or is claimed to be, affected by the terms or provisions of the order which are complained of.

A statement of the legal grounds on which the terms or provisions of the order which are complained of are challenged as not in accordance with law.

Prayers for the specific relief which the petitioner desires the Secretary to grant.

A statement of whether a hearing upon the petition is desired. An affidavit by the petitioner, or, if the petitioner is not an individual, by some officer of the petitioner having knowledge of the facts stated in the petition, verifying the petition and stating that it is filed in good faith and not for delay.*† [Sec. 201]

900.103 Insufficient petition. If the Secretary, or such officer or employee of the Department as he may designate for the purpose, finds that any petition filed does not substantially comply with subsection (15) (A) of section 8c of the Act (49 Stat. 760, 50 Stat. 246; 7 U.S.C., Sup., 608c (15)), the petitioner shall be so advised, and a copy of the regulations in this subpart shall be sent to the petitioner by depositing the same in the United States mails, registered and addressed to the petitioner at the last known business address of the petitioner, and the petitioner may thereupon file, in accordance with said regulations, a sufficient petition complying substantially with said provisions of the Act.*† [Sec. 202]

900.104 Interrogatories. At any time before hearing upon a sufficient petition, as hereinafter provided for, the Secretary, or such officer or employee of the Department as he may designate for the purpose, may propound to the petitioner, for discovery by him of material facts and documents, written interrogatories relating to the petitioner's business and relevant to the issues raised by the petition. A copy of such interrogatories shall be served upon the petitioner by registered mail and the petitioner shall file in triplicate in the Office of the hearing clerk full and complete answers to each question propounded and shall verify the answers by affidavit. Such answers shall be filed on or before a date to be stated in the interrogatories, which date shall not be earlier than five full days after the date on which the interrogatories are mailed to the petitioner. The interrogatories and answers thereto, or any part thereof, may be admitted in evidence if relevant to the issues, in any hearing held upon the petition.*† [Sec. 203]

900.105 Notice of hearing. Upon the filing of a sufficient petition and request for hearing, the Secretary, or such officer or employee of the Department as he may designate for the purpose, shall appoint a time and designate a place for a hearing thereon, which hearing shall be held, at the option of the Secretary, in the State where the petitioner transacts business affected by the order, or in the State where the agency created to administer the provisions of the particular

order in question has its administrative offices, or in Washington, D. C.; or the hearing may be held at any other place which is mutually agreeable to the Secretary and the petitioner. The Secretary, or such officer of employee of the Department as he may designate for the purpose, shall give the petitioner a written notice which shall specify the time, place, and purpose of said hearing, by serving such written notice personally upon such petitioner at least three days prior to the date appointed for the hearing, or by depositing such written notice at least five days prior to the date appointed for the hearing in the United States mails, registered and addressed to such petitioner at the last known business address of the petitioner.*† [Sec. 300]

900.106 Withdrawal of petition. If, at any time after the petition is filed, the petitioner withdraws the same or withdraws the request for a hearing, the Secretary may thereupon dismiss the petition or make final rulings upon the prayers of the petition without further proceedings in the case.*† [Sec. 301]

900.107 Conduct of hearing. Every such hearing shall be conducted by a presiding officer, who shall be the Secretary, or such officer or employee of the Department as he may designate for the purpose. Any such designation may be made or revoked by the Secretary at any time before or during such hearing. Such hearing shall be conducted in the manner to be determined by the presiding officer as will be most conducive to the proper dispatch of business and the attainment of justice. In determining the scope of the hearing and the admissibility of evidence, the presiding officer shall, as far as possible, confine the same to matters relevant to the specific issues set forth or raised in the petition.*† [Sec. 302]

900.108 Parties. The parties to every such proceeding shall be the Secretary, who may be represented at the hearing by the presiding officer or by counsel, and the petitioner, who may appear in person or by counsel.*† [Sec. 303]

900.109 Time and place of hearing. Such hearing shall be held at the time and place set forth in the notice of hearing, or in any subsequent notice amending or superseding a prior notice, and may also, without notice other than announcement thereof at the hearing by the presiding officer, in the exercise of his discretion, be continued from day to day or adjourned to a different place, or to a later date, or to a date and place to be fixed in a subsequent notice to be later issued in the manner provided in § 900.105.*† [Sec. 304]

900.110 Nonappearance of petitioner. If at the time of said hearing any party to the proceeding is absent and no appearance is made on behalf of such party, the presiding officer shall, after the lapse of such period of time as he may consider proper and reasonable, have the name of such absent party called in the hearing room. If upon such call there is no response and no appearance on behalf of such absent party, the presiding officer may thereupon close the hearing, and the Secretary, without further proceedings in the case, may dismiss the petition or make final rulings upon the prayers of the petition.*† [Sec. 305]

*For statutory citation, see note to § 900.1.
†For source citation, see note to § 900.100.

900.111 Evidence. At any such hearing the presiding officer need not apply the technical rules of evidence, and affidavits of general economic facts relevant to the issues and bearing upon the validity or invalidity of the challenged order may be admitted in evidence and considered by the Secretary. The record of the general hearing held by the Secretary pursuant to which the challenged order was issued, or any relevant portions thereof, may likewise be admitted in evidence.*† [Sec. 306]

900.112 Burden of proof. Upon all issues of fact at the hearing raised by the petition the burden of proof shall be upon the petitioner.*† [Sec. 307]

900.113 Time consumed by hearing; briefs; copies of transcript. Full opportunity to be heard upon the issues raised by the petition shall be afforded to all parties to such proceeding, but the hearing shall be concluded within such reasonable time as the presiding officer shall determine, at which time, or within such time thereafter and upon such terms as the presiding officer may designate, written briefs may be filed in the office of the hearing clerk at Washington, D. C. (or, if the presiding officer so directs, with the presiding officer). Such written briefs shall be typewritten, mimeographed, or printed, and shall be filed in triplicate. A copy of such written briefs shall be available for public inspection at the office of the hearing clerk. Any person desiring a copy of the transcript of testimony shall be entitled to the same upon application to the Solicitor and upon payment of the fees fixed by the general regulations of the Department.*† [Sec. 308]

CROSS REFERENCE: For schedules of fees for copies, see § 1.1531.

900.114 Consolidated hearings. At the discretion of the Secretary, or such officer or employee of the Department as he may designate for the purpose, or the presiding officer, hearings upon two or more petitions filed by different handlers pertaining to the same order may be consolidated and the evidence taken at such consolidated hearing may be embodied in a single record.*† [Sec. 309]

900.115 Execution of procedural documents. All designations, notices, and other documents requiring the signature of the Secretary under the provisions of the regulations in this subpart except findings of fact and final rulings upon the prayers of the petition, may be signed in the name of the Secretary by such officer or employee of the Department as the Secretary may designate for the purpose, and any such designation may be made or revoked by the Secretary at any time before or during any proceeding.*† [Sec. 310]

900.116 Amendments. Upon due application and within the discretion of the Secretary, or of such officer or employee of the Department as he may designate for the purpose, or the presiding officer, the right of amendment of the petition and of all procedural documents in connection with any hearing shall be granted on such reasonable terms as to the Secretary, or to such officer or employee of the Department as he may designate for the purpose, including the presiding officer, in the exercise of his discretion, may seem right and proper.*† [Sec. 311]

900.117 Reopening hearing. The Secretary, or such officer or employee of the Department as he may designate for the purpose, or the presiding officer, may in his discretion, on his own motion or upon due application therefor made prior to the making of final rulings by the Secretary upon the prayers of the petition, reopen the hearing for the purpose of taking additional evidence.*† [Sec. 312]

900.118 The record. Every such hearing shall be publicly conducted, and the testimony given at the hearing shall be reported verbatim. The record of the proceeding shall consist of the petition, notices, procedural documents, challenged order, pertinent general regulations, transcript of testimony, and all documentary evidence offered and received at the hearing. As soon as practicable after the conclusion of the hearing the presiding officer shall transmit the record of the proceeding to the office of the hearing clerk, where it shall be available for public inspection. The presiding officer shall attach to the original transcript of testimony his certificate stating that the transcript is a true, correct and complete transcript of the testimony given at the hearing, except in such particulars as he shall specify, and that the exhibits transmitted are all the exhibits received in evidence at the hearing, with such exceptions as he shall specify. A copy of such certificate shall be attached to each copy of the transcript of testimony. In accordance with such certificate the presiding officer shall note on the original transcript, and the hearing clerk shall note upon each copy of the transcript, each correction detailed in such certificate by adding or crossing out (but without obscuring the text as originally transcribed) at the appropriate places any words necessary to make the text conform to the correct meaning.*† [Sec. 313]

900.119 Rulings. The Secretary shall render his decision based upon the record, by making such final rulings upon the prayers of the petition as may be proper and in accordance with law, either dismissing the petition, or modifying the terms or provisions of the order as applied to the petitioner, or exempting the petitioner from the application of the order. Such rulings shall contain specific findings of fact of the Secretary and shall be filed in the office of the hearing clerk and shall there be available for public inspection.*† [Sec. 314]

900.120 Service of rulings. As soon as practicable after the making and filing thereof, such findings of fact and rulings shall be served upon the petitioner either personally or by depositing the same in the United States mails, registered and addressed to the petitioner at the last known place of business of the petitioner. Actual notice of the contents of the order given the petitioner personally, either orally or in writing, or the said mailing and the expiration of 48 hours from the time of such mailing if the address of the petitioner is east of the Mississippi River, or the said mailing and the expiration of 72 hours from the time of said mailing if the address of the petitioner is west of the Mississippi River, shall constitute the giving of notice to the petitioner of the Secretary's ruling within the

*For statutory citation, see note to § 900.1.

†For source citation, see note to § 900.100.

meaning of subsection (14) of section 8c of the Act (49 Stat. 759, 50 Stat. 246; 7 U.S.C., Sup., 608c (14)).*† [Sec. 315]

900.121 Construction. Nothing contained in the regulations in this subpart shall be, or shall be construed to be, in derogation or modification of the rights of the Secretary or of the United States (a) to exercise any jurisdiction or powers granted by the Act or otherwise, and/or (b) to act in the premises in accordance with such jurisdiction and powers whenever such action is deemed advisable.*† [Sec. 400]

900.122 Notice of regulations. Public notice of the issuance of §§ 900.100–900.121 shall be given by (a) posting a copy of such regulations on the official bulletin board of the Department at Washington, D. C.; (b) issuing a press release containing a description of such regulations, and making available in the office of the hearing clerk copies of such regulations for the press; and (c) forwarding by mail copies of such regulations to the governors of the several States of the United States and to the executive heads of the Territories of the United States.*† [Sec. 500]

SUBPART—REGULATIONS GOVERNING HEARINGS TO INVESTIGATE ALLEGED VIOLATIONS BY HANDLERS OF ORDERS OF THE SECRETARY OF AGRICULTURE

900.130 Definitions. As used in the regulations in this subpart:

- (a) The term "Act" means the Agricultural Adjustment Act, approved May 12, 1933 (48 Stat. 31; 7 U.S.C. Chapter 26), as amended.
- (b) The term "Secretary" means the Secretary of Agriculture of the United States.
- (c) The term "Department" means the United States Department of Agriculture.
- (d) The term "hearing clerk" means the hearing clerk, Office of the Solicitor, United States Department of Agriculture, Washington, D. C.
- (e) The term "order" means any order, or any amendment thereto, which may be issued by the Secretary pursuant to sections 8c or 10 (i) of the Act (49 Stat. 753, 767, as amended; 7 U.S.C., Sup., 608c, 610 (i)), or pursuant to sections 56–60, inclusive, of an Act of Congress approved August 24, 1935 (49 Stat. 781; 7 U.S.C., Sup., 851–855), relating to handlers of anti-hog-cholera serum and hog-cholera virus.

- (f) The term "handler" means any processor, association of producers, or other individual, partnership, corporation, association or other business unit engaged in the handling of any agricultural commodity or product thereof specified in subsection (2) of section 8c of the Act, or in the handling of anti-hog-cholera serum or hog-cholera virus, and subject to an order issued by the Secretary, and also any officer, director, agent, or employee of such handler.*†† [Sec. 100]

*†The source of §§ 900.130 to 900.149, inclusive, is Regulations governing hearings under subsection (7) of section 8a of the Agricultural Adjustment Act to investigate alleged violations by handlers of orders of the Secretary of Agriculture, Oct. 24, 1935. (Gen. Regs., AAA, Series E)

900.131 Citation to show cause. Whenever the Secretary, or such officer or employee of the Department as he may designate for the purpose, has reason to believe that any handler has violated, or is violating, the provisions of any order or amendment thereto, the Secretary, or such officer or employee as he may designate for the purpose, in the name of the Secretary, may, by citation in writing served personally upon such handler, or by depositing in the United States mails a citation in writing registered and addressed to such handler at the last known business address of such handler, order such handler to show cause in writing on or before a certain date to be named in the citation why the Secretary should not refer the matter to the Attorney General for appropriate action against such handler.*† [Sec. 200]

900.132 Contents of citation to show cause. Such citation shall contain:

A statement of the alleged violations of the provisions of the order.

A statement of the time (which shall not be less than five days after service or mailing of such citation, as required by § 900.131) within which the handler must comply with the citation to show cause by filing, at such place or places and with such person or persons as shall be designated in the citation, a written answer in triplicate to the charges contained in the citation.*† [Sec. 201]

900.133 Filing of citation to show cause. A copy of the aforesaid citation shall be filed in the office of the hearing clerk, where it shall be available for public inspection.*† [Sec. 202]

900.134 Answer. Within the time required by the citation, the handler shall file, at such place or places and with such person or persons as shall be designated in the citation, a written answer in triplicate to the charges contained in such citation.

The answer shall be divided into paragraphs and shall contain admission or denials of the several charges and facts alleged in such citation, and all denials therein contained shall be amplified by full and frank statements of the facts relating to the alleged violations and the matters of defense relied upon.

The answer shall contain a statement of the correct name and address of the handler upon whom the citation has been personally served or to whom it has been mailed. If the handler is incorporated, such fact shall be stated together with the name of the State of incorporation, the date of incorporation, and the names, addresses and respective positions of the officers and directors of the corporation. If such handler is a member of an unincorporated association, partnership, or other business unit, the answer shall disclose the correct names and addresses of all the members constituting such business unit.

If the handler is not a natural person, the answer shall contain the name and address of an individual upon whom, as agent of such handler, notice of further proceedings may be personally served or to whom it may be mailed.

The answer shall be supported by an affidavit as to the truth of the matters stated therein, made by the handler or a duly authorized agent of the handler who has knowledge of the facts.

*For statutory citation, see note to § 900.1.

†For source citation, see note to § 900.130.

Upon proper cause shown, the Secretary, or such officer or employee of the Department as he may designate for the purpose, may extend the time within which such answer shall be filed, provided application for such extension is made within the time to show cause set forth in the citation.*† [Sec. 203]

900.135 Parties. The parties to every such proceeding shall be the Secretary, who may be represented at the hearing by the presiding officer or by counsel, and the handler, who may appear in person or by counsel.*† [Sec. 204]

900.136 Dismissal without hearing. If the Secretary finds the answer of such handler to be sufficient, he may order the proceeding dismissed, whereupon such handler shall be duly notified of the dismissal of the proceeding, and the order of dismissal shall be filed in the office of the hearing clerk.*† [Sec. 205]

900.137 Notice of hearing. If the proceeding is not dismissed by the Secretary, the Secretary, or such officer or employee of the Department as he may designate for the purpose, may appoint a time (which shall not be earlier than five days after the date on which the answer is required to be filed) and designate a place for a hearing to be held, at the option of the Secretary, in the State where the handler transacts business affected by the order, or in the State where the agency created to administer the provisions of the particular order in question has its administrative offices, or in Washington, D. C.; or the hearing may be held at any other place which is mutually agreeable to the Secretary and the handler. The Secretary, or such officer or employee of the Department as he may designate for the purpose, shall give the handler written notice, which shall specify the time, place, and purpose of such hearing, by serving such written notice personally upon such handler or his agent at least three days prior to the date appointed for such hearing, or by depositing such written notice at least five days prior to the day appointed for such hearing in the United States mails, registered and addressed to such handler or his agent at the last known business address of such handler, or agent.*† [Sec. 206]

900.138 Time and place of hearing. Such hearing shall be held at the time and place set forth in the notice of hearing, or in any subsequent notice amending or superseding a prior notice, and may also, without notice other than announcement thereof at the hearing by the presiding officer, in the exercise of his discretion, be continued from day to day or adjourned to a different place, or to a later date, or to a date and place to be fixed in a subsequent notice to be later issued in the manner provided in § 900.137. If, at the time of such hearing, any party to the proceeding is absent and no appearance is made on behalf of such party, the presiding officer shall, after the lapse of such period of time as he may consider proper and reasonable, have the name of such absent party called in the hearing room. If upon such call there is no response and no appearance on behalf of such absent party, the presiding officer may proceed with the hearing or may in his discretion continue the hearing as provided in this section.*† [Sec. 207]

900.139 Conduct of hearing. Every such hearing shall be conducted by a presiding officer, who shall be the Secretary, or such officer or employee of the Department as the Secretary may designate for the purpose. Any such designation may be made or revoked by the Secretary at any time before or during such hearing. Such hearing shall be conducted in such manner, to be determined by the presiding officer, as will be most conducive to the proper dispatch of business and the attainment of justice. At any such hearing the presiding officer need not apply the technical rules of evidence.*† [Sec. 208]

900.140 Briefs. Written briefs, in triplicate, typewritten, mimeographed or printed, may be filed in the office of the hearing clerk (or, if the presiding officer so directs, with the presiding officer), within such time after the conclusion of the hearing, and upon such terms, as the presiding officer may designate.*† [Sec. 209]

900.141 Argument. At the conclusion of the taking of the evidence, and as a part of the hearing, opportunity shall be afforded by the presiding officer to all parties to the hearing to present oral arguments in favor of their respective contentions, based on the evidence. In his discretion, having regard to the nature and quantity of the evidence and to the importance of the issues, the presiding officer may limit the time to be consumed by such oral arguments and restrict the number of such arguments to one on behalf of each party to the hearing.*† [Sec. 210]

900.142 Execution of procedural documents. All citations, designations, notices and other documents requiring the signature of the Secretary under the provisions of the regulations in this subpart except any findings of fact and any order dismissing the proceedings or referring the matter to the Attorney General, as the case may be, may be signed in the name of the Secretary by such officer or employee of the Department as the Secretary may designate for the purpose, and any such designation may be made or revoked by the Secretary at any time before or during any proceeding.*† [Sec. 211]

900.143 Amendments. The Secretary, or the presiding officer, or such officer or employee of the Department as the Secretary may designate for the purpose, shall, upon due application therefor and within his discretion, grant, upon such reasonable terms as to him may seem right and proper, the right of amendment of the answer and of any other procedural document filed by the handler in such proceeding. The Secretary or the presiding officer, or such officer or employee of the Department as the Secretary may designate for the purpose, may, upon his own motion and upon such reasonable terms as to him may seem right and proper, make or allow amendment to the citation to show cause and to any other procedural document filed by or on behalf of the Secretary in such proceeding.*† [Sec. 212]

900.144 Reopening hearing. The Secretary, or such officer or employee of the Department as he may designate for the purpose, or the presiding officer, may in his discretion, on his own motion or upon due application therefor made prior to the rendering of a de-

*For statutory citation, see note to § 900.1.

†For source citation, see note to § 900.130.

cision by the Secretary, reopen the hearing for the purpose of taking additional evidence.*† [Sec. 213]

900.145 The record. Every such hearing shall be publicly conducted and the testimony given at the hearing shall be reported verbatim. The record of the proceeding shall consist of the citation to show cause, answer, notice of hearing, procedural documents, order of the Secretary alleged to be violated, pertinent general regulations, transcript of testimony, and all documentary evidence offered and received at the hearing. As soon as practicable after the conclusion of the hearing, the presiding officer shall transmit the record of the proceedings to the office of the hearing clerk, where it shall be available for public inspection. The presiding officer shall attach to the original transcript of testimony his certificate stating that the transcript is a true, correct and complete transcript of the testimony given at the hearing, with exceptions in such particulars as he shall specify, and that the exhibits transmitted are all of the exhibits received in evidence at the hearing, with such exceptions as he shall specify. A copy of such certificate shall be attached to each copy of the transcript of testimony. In accordance with such certificate, the presiding officer shall note on the original transcript, and the hearing clerk shall note upon each copy of the transcript, each correction detailed in such certificate by adding or crossing out (but without obscuring the text as originally transcribed), at the appropriate places, any words necessary to make the text conform to the correct meaning.*† [Sec. 214]

900.146 Copies of transcript. Any person desiring a copy of the transcript of testimony shall be entitled to the same upon application to the Solicitor of the Department and upon payment of the fees fixed by the regulations of the Department.*† [Sec. 215]

CROSS REFERENCE: For schedules of fees for copies, see § 1.1531.

900.147 Decision. Any decision upon the record of the proceeding shall be rendered by the Secretary. If the Secretary finds that the handler has not violated any of the provisions of the order respecting which the citation to show cause has been issued, the Secretary may enter an order dismissing the proceeding. If the Secretary finds that the handler has violated any of the provisions of the order respecting which the citation to show cause was issued, and determines to refer the matter to the Attorney General, he shall enter an order setting forth specifically his findings of fact and referring the matter to the Attorney General for appropriate action against such handler. Any order issued by the Secretary relating to the disposition of such proceeding shall be filed in the office of the hearing clerk, where it shall be available for public inspection.*† [Sec. 216]

900.148 Construction. Nothing contained in the regulations in this subpart shall be, or shall be construed to be, in derogation or modification of the rights of the Secretary or of the United States to exercise any jurisdiction or powers granted by the Act, or otherwise, and/or to act in the premises in accordance with such jurisdiction and powers whenever such action is deemed advisable.*† [Sec. 300]

900.149 Public notice of foregoing regulations. Public notice of the issuance of §§ 900.130–900.148 shall be given by: (a) posting a copy of such regulations on the official bulletin board of the Department at Washington, D. C.; (b) issuing a press release containing a description of such regulations and making available in the office of the hearing clerk copies of such regulations for the press; and (c) forwarding by mail copies of such regulations to the governors of the several States of the United States and to the executive heads of the Territories of the United States.*† [Sec. 400]

SUBPART—REGULATIONS GOVERNING THE PRODUCTION OF EVIDENCE AND APPEARANCES IN ADMINISTRATIVE PROCEEDINGS

900.160 Definitions. As used in the regulations in this subpart:

(a) The term "Act" means the Agricultural Adjustment Act, approved May 12, 1933 (48 Stat. 31; 7 U.S.C. Chapter 26), as amended.

(b) The term "Secretary" means the Secretary of Agriculture of the United States.

(c) The term "Department" means the United States Department of Agriculture.

(d) The term "hearing clerk" means the hearing clerk, Office of the Solicitor, United States Department of Agriculture, Washington, D. C.

(e) The term "proceeding" means any hearing or investigation which the Secretary is authorized or required by the Act or by sections 56–60, inclusive, of an Act of Congress approved August 24, 1935, relating to anti-hog-cholera serum and hog-cholera virus, to conduct.

(f) The term "presiding officer" means such officer or employee of the Department as the Secretary may designate to conduct a proceeding.

(g) The term "order" as used in § 900.168 means any order issued by the Secretary pursuant to sections 8c or 10 (i) of the Act (49 Stat. 753, 767, as amended; 7 U.S.C., Sup., 608c, 610 (i)) or sections 56–60, inclusive, of an Act of Congress approved August 24, 1935 (49 Stat. 781; 7 U.S.C., Sup., 851–855), relating to handlers of anti-hog-cholera serum and hog-cholera virus.

(h) The term "person" means an individual, partnership, corporation, association or any other business unit.

(i) The term "documentary evidence" means any book, record, contract, document, memorandum, paper, correspondence or other written data.*†† [Sec. 100]

*††The source of §§ 900.160 to 900.170, inclusive, is Regulations governing the production of evidence and appearances in administrative proceedings, Department of Agriculture, Oct. 24, 1935. (Gen. Regs., AAA, Series F)

900.161 Subpenas; who may issue. The attendance of witnesses and the production of documentary evidence from any place in the United States on behalf of any party to a proceeding, including the Secretary, may by subpena, be required at any designated place of proceeding. Subpenas shall be issued by the Secretary or, in the name

*For statutory citation, see note to § 900.1.

†For source citation, see note to § 900.130.

of the Secretary, by the presiding officer or such officer or employee of the Department as the Secretary may designate for the purpose.*† [Sec. 200]

900.162 Subpenas duces tecum; application therefor. Subpenas for the production of documentary evidence, except as issued by the Secretary or the presiding officer on their own motions respectively, shall be issued only upon a verified written application therefor addressed to the person authorized to issue subpenas under § 900.161, specifying, as nearly as possible, the particular documentary evidence desired and the relevant and material facts sought to be proved thereby.*† [Sec. 201]

900.163 Return of subpoena and manner of service. Subpenas may be served personally or by registered mail. The return of service on a subpoena made by a United States marshal or his deputy serving the same shall constitute evidence of service. The evidence of service made by any person other than a United States marshal or his deputy shall consist of an affidavit by such person describing the manner of service, returned on or with the original subpoena in accordance with the form of affidavit thereon. In the case of service by registered mail, the evidence of service shall consist of an affidavit made by the person mailing the subpoena and a return card attached to such affidavit signed by a person subpoenaed or his duly authorized agent. Where there is a failure of service, there shall be stated on the original subpoena by the person attempting service the reasons for such failure. In making personal service, the person making service shall exhibit the original subpoena to the person served, shall read the same to him if he is unable to read, and shall leave a duplicate original thereof with him, or, in the event such exhibition and reading is prevented by the person to be served, shall leave a duplicate original thereof with him. The original subpoena bearing or accompanied by the required return, affidavit or statement shall be returned forthwith to the person who issued the same.*† [Sec. 202]

900.164 Oath. The Secretary, or the presiding officer, or such officer or employee of the Department as the Secretary may designate for the purpose, may administer to or take from any witness an oath, affirmation or affidavit.*† [Sec. 203]

900.165 Depositions. The Secretary, or the presiding officer, or such officer or employee of the Department as the Secretary may designate for the purpose, may order testimony to be taken by deposition in any proceeding and at any stage thereof. Any party to a proceeding, other than the Secretary, desiring to take the deposition of any witness shall make written application therefor to the person authorized hereunder to order the deposition taken. There shall be set forth in such application the title of the proceeding, the reasons why such deposition should be taken, the time when, the place where, and the name and post-office address of an officer authorized to administer oaths before whom it is desired the deposition be taken, the name and post-office address of the witness, and the subject matter or matters respecting which the witness is expected to testify. Upon good cause shown, the person authorized hereunder to order the

deposition taken shall, by order, name the witness whose deposition is to be taken and specify the time when, the place where, and an officer authorized to administer oaths before whom the witness is to testify, but such time and place and the person before whom the deposition is to be taken, so specified in such order, may or may not be the same as those suggested in said application. The said order shall also specify the time, manner and place for the return of the deposition and the person to whom the deposition shall be returned. The applicant for such order shall thereupon cause to be served, personally or by registered mail, upon the other parties to the proceeding, or their attorneys appearing in the proceeding, copies of said order not less than five days before the time of the taking of the deposition when the deposition is to be taken within the United States, and not less than fifteen days before the time of taking of the deposition when the deposition is to be taken in a foreign country, and the service of such copies shall be evidenced by return in the same manner as provided in § 900.163 relating to the returns of subpoenas. Any such person having power to administer oaths and designated as the person before whom the deposition shall be taken shall have power to sign and issue subpoenas, requiring any witness named in such order to appear and testify and/or to produce documentary evidence. Whenever the Secretary, as a party to the proceeding, shall desire to take the deposition of any witness, the Secretary, the Presiding Officer, or such officer or employee of the Department as the Secretary may designate for the purpose may, on their own motions respectively, issue such order and give such notice to the other parties to the proceeding or their attorneys appearing in the proceeding. The testimony taken by deposition shall be reduced to writing by the person designated to take the same or under his direction, after which the deposition shall be subscribed by the witness and certified in the usual form by the person before whom the deposition is taken.

The provisions of §§ 900.161–900.164, 900.166, 900.167 shall be applicable insofar as appropriate to depositions taken under this section.*† [Sec. 300]

900.166 Segregation of testimony and official publications. When relevant and material facts offered in evidence in any proceeding are embraced in a book, record or document containing other facts not material or relevant and not intended or proper to be put in evidence, such immaterial and irrelevant facts shall be excluded and shall be segregated insofar as possible. Official publications or reports of the Department and other Departments of the United States Government and of the several States or Territories of the United States, when material or relevant, shall be received in evidence without authentication.*† [Secs. 400, 401]

900.167 Fees and mileage. Witnesses who are subpoenaed and who appear in such proceeding, including witnesses whose depositions are taken, shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and persons taking depositions shall be entitled to the same fees as are paid for like

*For statutory citation, see note to § 900.1.

†For source citation, see note to § 900.160.

services in the courts of the United States. Witness fees and mileage shall be paid by the party at whose instance the witnesses appear, and claims therefor, as to witnesses subpoenaed on behalf of the Secretary, shall be proved before the person issuing the subpoena, and as to witnesses subpoenaed on behalf of any other party, shall be presented to such party.*† [Sec. 500]

900.168 Appearances in a proceeding relating to orders. In any proceeding relating to the violation of any order, or in any proceeding held pursuant to a petition filed by any handler stating that any order or any provision thereof, or any obligation imposed in connection therewith, is not in accordance with law, and praying for a modification thereof or an exemption therefrom, the parties thereto, including the Secretary, may appear in person or be represented by attorneys at law in good standing who have been admitted to practice before the Supreme Court of the United States, or the highest court of any State or Territory of the United States, or the Court of Appeals, or the Supreme Court of the District of Columbia. Any individual who, or member of a partnership which, is a party to any such proceeding may appear for himself or such partnership upon adequate identification, and a corporation or association may be represented by a bona-fide officer of such corporation or association. Any person appearing as counsel or representative for any other person in such proceeding may, in the discretion of the Secretary or the presiding officer, be required to file with the Secretary or the presiding officer a power of attorney to act as such counsel or representative. The Secretary may be represented at such proceeding by the presiding officer or by counsel.

The Secretary or the presiding officer may, in his discretion, deny, suspend or revoke the right of any attorney to represent others in such a proceeding who is shown not to possess the requisite qualifications to represent others, or who is shown to be lacking in character or integrity, or is shown to be guilty of unprofessional conduct. Before taking such action, the attorney shall be afforded an opportunity to be heard, and where the determination upon such question is made by the presiding officer, such attorney may appeal therefrom to the Secretary, whose decision thereon shall be final.*† [Sec. 600]

900.169 Construction. Nothing contained in the regulations in this subpart shall be, or shall be construed to be, in derogation or modification of the rights of the Secretary or of the United States (a) to exercise any jurisdiction or powers granted by title I, part II, section 10 (h) of the Act (48 Stat. 37; 7 U.S.C. 610 (h)) or otherwise, and/or (b) to act in the premises in accordance with such jurisdiction and powers whenever such action is deemed advisable.*† [Sec. 700]

900.170 Public notice of foregoing regulations. Public notice of the issuance of §§ 900.160–900.169 shall be given by (a) posting a copy of such regulations on the official bulletin board of the Department at Washington, D. C.; (b) issuing a press release containing a description of such regulations and making available in the office of the hearing clerk copies of such regulations for the press; and (c)

forwarding by mail copies of such regulations to the Governors of the several States of the United States and to the executive heads of the Territories of the United States.*† [Sec. 800]

SUBPART—MEDIATION AND ARBITRATION IN MARKETING OF DAIRY PRODUCTS

900.180 Definitions. As used in the regulations in this subpart:

(a) The term "act" means Public Law No. 10, 73rd Congress, approved May 12, 1933, as reenacted and amended by the Agricultural Marketing Agreement Act of 1937 approved June 3, 1937 (48 Stat. 31, 50 Stat. 246; 7 U.S.C. Chapter 26 and Sup.)

(b) The term "Secretary" means the Secretary of Agriculture of the United States.

(c) The term "Department" means the United States Department of Agriculture.

(d) The term "Dairy Section" means the Dairy Section, Division of Marketing and Marketing Agreements, Agricultural Adjustment Administration, United States Department of Agriculture.

(e) The term "cooperative" means any association, incorporated or otherwise, which is in good faith owned or controlled by producers, or organizations thereof, of milk or its products, and which is bona fide engaged in the collective processing or preparing for market or handling or marketing, in the current of interstate or foreign commerce, of milk or its products.

(f) The term "arbitrator" means any officer or employee of the Department designated by the Secretary to arbitrate a bona fide dispute with reference to terms and conditions of the sale of milk or its products, between a producer cooperative and purchasers, handlers, processors, or distributors of milk or its products, pursuant to section 3 (a) of the Agricultural Marketing Agreement Act of 1937 (50 Stat. 248; 7 U.S.C., Sup., 671 (a)); and when more than one arbitrator is designated, the term "arbitrator" means the full number designated.

(g) The term "mediator" means any officer or employee of the Department designated by the Secretary to mediate a bona fide dispute with reference to terms and conditions of the sale of milk or its products, between a producer cooperative and purchasers, handlers, processors, or distributors of milk or its products, pursuant to section 3 (a) of the Agricultural Marketing Agreement Act of 1937.*†† [Sec. 100]

*§§ 900.180 to 900.198, inclusive, issued under the authority contained in sec. 3, 50 Stat. 248; 7 U.S.C., Sup., 671.

††The source of §§ 900.180 to 900.198, inclusive, (except for amendments noted in the text,) is Regulations governing mediation and arbitration under section 3 of the Agricultural Marketing Agreement Act of 1937, Department of Agriculture, Oct. 4, 1937. (Gen. Regs., AAA, Series G, No. 1, as amended)

900.181 Filing of applications for mediation or arbitration. All applications for mediation or arbitration, all submissions, and all correspondence regarding mediation or arbitration shall be addressed to the Secretary, attention of the Dairy Section.*†† [Sec. 200]

*For statutory citation, see note to § 900.1.

†For source citation, see note to § 900.160.

**††For statutory and source citations, see note to § 900.180.

900.182 Application for mediation. An application for mediation by a cooperative shall be in writing and shall include the following information:

- (a) Names in full of the parties to the dispute and their addresses;
- (b) Description of the cooperative organization and business, including copies of the articles of incorporation or association, by-laws, membership contract, number of shares of outstanding stock; approximate portion owned by active producers; function performed in connection with the collective processing, preparing, handling, or marketing of milk or its products; and distribution of membership by States, distribution by States of plant facilities for collecting, processing, or disposing of milk or its products, business operations for year last past, including total quantity of milk and its products handled by the applicant and proportion of that quantity sold in States other than the States of production.
- (c) Suggested time and place for meeting between parties and mediator.*† [Sec. 300]

900.183 Inquiry by the Secretary. Upon receipt of an application for mediation, the Secretary, through such officers or employees of the Department as he may designate, may make any inquiry which is deemed to be necessary or proper in order to determine whether a bona fide dispute exists.*† [Sec. 301]

900.184 Notification. The Secretary will notify the applicant as to whether he considers that mediation will effectuate the purpose of the Act and as to whether he will mediate.*† [Sec. 302]

900.185 Assignment of mediator. The Chief of the Dairy Section shall assign a mediator, from the group designated by the Secretary, to act in such capacity.*† [Sec. 303]

900.186 Meetings. All meetings held pursuant to §§ 900.182–900.188 hereof shall be held with and under the direction of the mediator.*† [Sec. 304]

900.187 Mediator's report. The mediator, upon the completion of mediation proceedings, shall submit to the Secretary a complete report on such proceedings.*† [Sec. 305]

900.188 Mediation agreement. An agreement arrived at by mediation shall not become effective until approved by the Secretary, and the Secretary will not approve an agreement if there is evidence of fraud, if there is a lack of evidence to support the agreement, or if the agreement provides for any unfair trade practices.*† [Sec. 306]

900.189 Application for arbitration. An application for arbitration by a cooperative shall be in writing and shall contain the following information:

- Names in full of the parties to the dispute and their addresses;
- The same information required under § 900.182 (b);
- Concise statement of dispute to be submitted;
- Originals or certified copies of all contracts, if any, involved in the dispute, and of correspondence which has passed between the parties and of any other documents or information relied upon;

Dates before which it is desired that the hearing shall be had and the award shall become effective;

Suggested time and place for arbitration hearing.

The applicant shall send a copy of the application to each other party to the dispute.*† [Sec. 400]

900.190 Inquiry by the Secretary. Upon receipt of an application for arbitration, the Secretary, through such officers or employees of the Department as he may designate, may make any inquiry deemed to be necessary or proper to determine whether a bona fide dispute exists, assist the parties in reducing the dispute to well-defined issues, and select the arbitrator who would be satisfactory to all parties.*† [Sec. 401]

900.191 Notification. The Secretary, within a reasonable time after the receipt of an application, will notify the applicant as to whether he will grant the application.*† [Sec. 402]

900.192 Submission. Within a reasonable time after the receipt of the Secretary's consent to arbitrate, the parties to the dispute shall file with the Secretary a formal submission, which shall contain the following information:

- (a) Names in full of the parties;
- (b) Addresses of the parties to whom all notifications and communications concerning the arbitration shall be sent;
- (c) Description of the organization and businesses of all parties to the dispute, including sufficient information to show that the cooperative is a bona fide one, and that the parties are engaged in interstate commerce;
- (d) Concise statement of the specific questions submitted and a brief outline of the contentions of each party to the dispute concerning which facts will be presented at the hearing, and a statement as to the period during which the award shall be in effect, said period to be not less than thirty days from the effective date of the award;
- (e) Name of arbitrator;
- (f) Time and place of arbitration, including street address;
- (g) Stipulation by the parties that they will produce any books, records and correspondence required by the arbitrator as being necessary to a fair determination of the dispute;
- (h) Agreement by the parties that they will consider the award as final and will comply therewith;
- (i) Stipulation by the parties that arbitration is to take place under rules and regulations issued by the Secretary, and that any such rules and regulations pertaining to mediation and arbitration shall be considered a part of the submission;
- (j) Stipulation that stenographic report of the proceedings must be made.

The submission shall be signed by each party before a notary public, and when the signature is that of an agent of a corporation or cooperative association, the same shall be accompanied by evidence of the authority to sign.

A submission may be withdrawn at any time before the award, and any question held by the arbitrator to be a separable question may

*†For statutory and source citations, see note to § 900.180.

be withdrawn before award by agreement of all parties. When any question is so withdrawn, the parties shall file with the arbitrator the agreement on that question reached by the parties, showing all the details thereof, and the arbitrator shall include it in the record of the arbitration.*† [Sec. 403]

900.193 Designation of arbitrator. The Secretary, after receiving the submission, will designate one or more persons to act as arbitrator.*† [Sec. 404]

900.194 Hearing. The arbitrator shall have full discretion to conduct the hearing in such manner as will, in his opinion, enable him to ascertain all the facts in the case.

Parties to the dispute may appear in person or by duly accredited agents and may be represented by counsel.

All relevant and material evidence may be presented, and the arbitrator shall not be bound by the legal rules of evidence.

The arbitrator, in the presence of the parties, may require the production of books and records for examination by himself, but not for examination of confidential information by other parties to the dispute, unless the party producing the same consents to its examination by the other parties to the dispute.

No evidence offered by one party shall be received except in the presence of all parties unless the parties so agree in a submission specifying the nature of the evidence to be received, but final determination as to what will be considered confidential shall be made by the arbitrator.

The arbitrator may request the opinions of economists, marketing specialists, statisticians, lawyers, accountants, and other experts.

When two or more arbitrators are designated to hear a dispute, and they disagree, the award of the majority shall be the final award. If the arbitrators are evenly divided, there shall be no award.

A stenographic record of all the proceedings during arbitration hearing must be made.* [Sec. 405, Gen. Regs., Series G, Aug. 19, 1937, as amended Sept. 7, 1937]

900.195 Award. An award shall be made within ten days after the close of the hearing.

The award shall be in writing and shall cover only points of dispute raised in the submission.

The arbitrator, in making the award, may use his own technical knowledge in addition to the evidence submitted by the parties.

The award shall state the period during which it shall be in effect, said period to be not less than thirty days from the effective date thereof; and said period may be extended by agreement among the parties upon notification thereof to the Secretary, unless or until the Secretary withdraws his approval.

The arbitrator shall sign the award in the presence of a notary public, or, when more than one arbitrator is designated, the arbitrators shall sign in the presence of each other.

Copies of the award shall be delivered to the parties by the Dairy Section.* [Sec. 406, Gen. Regs., Series G, Aug. 19, 1937, as amended Sept. 7, 1937, and Oct. 4, 1937]

900.196 Approval of award. The award shall not become effective until approved by the Secretary, and the Secretary will not approve an award if there is evidence of fraud, misconduct of the arbitrator, lack of evidence to support the award, or if the award provides for any unfair trade practices.*† [Sec. 407]

900.197 Costs. The parties jointly shall pay for the stenographic record, and a copy of the record shall be furnished by the parties to the arbitrator and shall be forwarded by him to the Secretary, ultimately to be filed in the Department.

The arbitrator shall not receive compensation from parties to the dispute.*† [Sec. 408]

900.198 Construction. Nothing contained in the regulations in this subpart shall be, or shall be construed to be, in derogation or modification of the rights of the Secretary or of the United States to exercise any jurisdiction or power granted by the Act, or otherwise.*† [Sec. 500]

SUBPART—DISCLOSURE OF CONFIDENTIAL INFORMATION

900.200 Definitions. As used in the regulations in this subpart:

(a) The term “Agricultural Act” means the Agricultural Adjustment Act, approved May 12, 1933 (48 Stat. 31; 7 U.S.C. Chapter 26), as amended.

(b) The term “Secretary” means the Secretary of Agriculture of the United States.

(c) The term “Department” means the United States Department of Agriculture.

(d) The term “license”¹ means any license which has been, or may hereafter be, issued by the Secretary pursuant to section 8 (3) of the Agricultural Act (48 Stat. 35, as amended; 7 U.S.C. 608 (3)).

(e) The term “agreement” means any marketing agreement which has been, or may hereafter be, entered into by the Secretary pursuant to section 8 (2) of the Agricultural Act (48 Stat. 34, as amended; 7 U.S.C. 608 (2)).

(f) The term “order” means any order issued by the Secretary pursuant to the powers vested in him by the Agricultural Act, including any order of the Secretary revoking a license pursuant to section 8 (3) of the Agricultural Act.

(g) The term “person” means any individual, corporation, partnership, unincorporated association or any other business unit.

(h) The term “official” means the Secretary, any officer, employee, clerk, expert or other person employed by the Department, and any market administrator, control committee, managing agent or other person or committee appointed by the Secretary or selected or elected pursuant to the provisions of any agreement or license, who performs duties prescribed by such agreement or license, or any agent or employee of any market administrator, control committee, managing agent, or such other person or committee.

¹Authority for issuance of licenses discontinued after enactment of the Act of August 24, 1935, which authorized the issuance of orders (49 Stat. 753; 7 U.S.C., Sup., 608c), and validated licenses continuing in effect (49 Stat. 776).

(i) The term "information" means and includes reports, books, accounts, records, and the facts and information contained therein, required to be furnished to any official pursuant to the provisions of any agreement or license. (Sec. 10 (c), 48 Stat. 37, secs. 1, 2, 50 Stat. 246, 248; 7 U.S.C., Sup., 610 (c)) [Sec. 100, Gen. Regs., Series 5, Rev. 1, July 3, 1934]

900.201 Provisions relating to confidential information—(a)
Conditions of disclosure. To the extent not otherwise expressly provided by any agreement or license, all information in the possession of any official which relates to the business or property of any person and which was furnished by or obtained from such person pursuant to the requirements of any marketing agreement or license shall be kept confidential and shall not be disclosed, divulged or made public except that:

(1) Such information may be disclosed, divulged or made public if and to the extent that the same information has been obtained by or furnished to such official in some manner other than pursuant to the requirements of such marketing agreement or license, or from a person, not an official, other than the person to whose business or property such information relates; or if such information is otherwise required by law to be furnished to such official.

(2) Such information may be furnished to other officials for use in the regular course of their official duties.

(3) Such information may be combined and published in the form of general statistical studies or data in which the identity of the person furnishing such information or from whom it was obtained shall not be disclosed.

(4) Such information may be disclosed upon lawful demand made by the President, or by either House of the Congress or any committee thereof, or in response to a subpoena issued by any court of competent jurisdiction.

(5) Such information may be offered in evidence (whether or not it has been obtained from or furnished by the person or persons against whom it is offered) by or on behalf of the Secretary, the United States and/or the official who obtained it or to whom it was furnished: in any administrative hearing held pursuant to the Agricultural Act, or in any action, suit or proceeding (at law or in equity, civil or criminal) in which the Secretary, the United States and/or the official who obtained such information, or to whom it was furnished, are parties (i) which is instituted for the purpose of enforcing or restraining the violation of any license, agreement, or order, or for collecting any penalty or forfeiture provided for in the Agricultural Act, or (ii) in which the validity, propriety or applicability of an agreement, license, or order is challenged or involved.

All disclosures and all making public of any information obtained by any official, except as forbidden to be disclosed, divulged or made public by this paragraph is hereby expressly authorized by the Secretary.

(b) Penalties. Any official who shall have been determined by the Secretary to have violated the provisions of § 900.201 (a) by willfully divulging, disclosing or making public any information ob-

tained by or furnished to or in the possession or custody of such official pursuant to the provisions of any agreement or license, shall upon conviction, be subject to the penalty of \$100 for each offense. (Sec. 10 (c), 48 Stat. 37, secs. 1, 2, 50 Stat. 246, 248; 7 U.S.C., Sup., 610 (c)) [Secs. 200, 201, Gen. Regs., Series 5, Rev. 1, July 3, 1934]

900.202 Provisions prohibiting employees from becoming associated with certain business groups after leaving the Department. Unless the prior written consent of the Secretary is first obtained, no officer, attorney, clerk or employee of the Department who, during the period of his employment in the Department, shall have had any part in any negotiations between the Secretary and any person or persons in connection with any agreement or license, shall, for the period of two years immediately following the termination of such employment, serve as a member of any supervisory body, executive committee, council, control board, or other governing or administrative board or tribunal, established by or pursuant to any such agreement or license, nor shall he during such period serve as manager, managing agent, executive secretary, or attorney for, or otherwise accept employment or become associated with any such administrative or governing board or tribunal. Any person who shall violate the provisions of this section shall, upon conviction, be subject to a penalty of not more than \$100 for each day during which such violation shall continue, and each day during which such violation continues shall constitute a separate offense. (Sec. 10 (c), 48 Stat. 37, secs. 1, 2, 50 Stat. 246, 248; 7 U.S.C., Sup., 610 (c)) [Secs. 300, 301, Gen. Regs., Series 5, Rev. 1, July 3, 1934]

SUBPART—FILING AND CERTIFICATION OF DOCUMENTS

900.220 Definitions. As used in the regulations in this subpart:

- (a) The term "Act" means the Agricultural Adjustment Act, approved May 12, 1933 (48 Stat. 31; 7 U.S.C. Chapter 26), as amended.
- (b) The term "Secretary" means the Secretary of Agriculture of the United States.
- (c) The term "chief hearing clerk" means chief hearing clerk in the Department of Agriculture.
- (d) The term "general regulations" means and includes any regulations made by the Secretary of Agriculture, and approved by the President of the United States pursuant to section 10 (c) of the Act.
- (e) The term "marketing agreement" means any marketing agreement executed by the Secretary pursuant to section 8 (2) of the Act (48 Stat. 34, as amended; 7 U.S.C., 608 (2)).
- (f) The term "license"² means any license issued by the Secretary pursuant to section 8 (3) of the Act (48 Stat. 35, as amended; 7 U.S.C. 608 (3)).
- (g) The term "seal" means the official seal of the Department of Agriculture procured and adopted as such seal by the Secretary pursuant to title 5, section 513, of the United States Code.
- (h) The term "hearing" means any hearing described in § 900.221.

² Authority for issuance of licenses discontinued after enactment of the Act of August 24, 1935, which authorized the issuance of orders (49 Stat. 753; 7 U.S.C., Sup., 608c), and validated licenses continuing in effect (49 Stat. 776).

(i) The term "administrative order" means any administrative order made by the Secretary, which relates to the Agricultural Adjustment Administration of the Department of Agriculture.*† [Sec. 100]

* §§ 900.220 to 900.226, inclusive, issued under the authority contained in sec. 10 (c), 48 Stat. 37, secs. 1, 2, 50 Stat. 246, 248; 7 U.S.C., Sup., 610 (c).

†The source of §§ 900.220 to 900.226, inclusive, is general regulations made by the Secretary of Agriculture with the approval of the President under the Agricultural Adjustment Act, May 12, 1933, as amended, Oct. 24, 1934. (Gen. Regs., AAA, Series 7, Revision 1)

900.221 Documents to be filed in the office of the chief hearing clerk. The chief hearing clerk shall receive for filing and shall promptly enter in his docket proper entries in respect to the filing of all of the papers and documents authorized or required to be filed in the office of the chief hearing clerk by general regulations (including those described in this section), administrative orders of the Secretary, and such other papers and documents as may be specified from time to time in written instructions by General Counsel,³ and shall also accept for filing in his office:

(a) Any paper or document which is filed in connection with any hearing held pursuant to the Act, regulations, or administrative orders.

(b) Regulations made by the Secretary with the approval of the President pursuant to section 10 (c) of the Act.

(c) Administrative orders.

(d) Any paper or document presented for filing in the office of the chief hearing clerk in connection with the termination of any license pursuant to applicable regulations, in connection with the termination of any marketing agreement, and in connection with the amendment of any marketing agreement.

(e) Any document executed by the Secretary or written order or decision made by the Secretary in connection with any marketing agreement or license.

(f) Any document designating any market administrator or other agent of the Secretary pursuant to any marketing agreement or license, or any subagent designated by any agent of the Secretary.

(g) Any paper or document executed by the Secretary in connection with any marketing agreement.

(h) Any document relating to the nomination, appointment or election (or protest against such nomination, appointment or election) of any member of a supervisory body established pursuant to a marketing agreement or license.

(i) Any document relating to any act, order or decision of any supervisory body established pursuant to any marketing agreement or license.

(j) Any document relating to any act, order or decision of any market administrator or other agent designated by the Secretary pursuant to the terms of any marketing agreement or license.

³ Solicitor of the Department.

(k) Any document relating to any budget of any supervisory body established pursuant to a marketing agreement or license.*† [Secs. 200, 201]

900.222 Certified copies required. Whenever any papers or documents are tendered to the chief hearing clerk, by the secretary of any control committee or supervisory body (acting pursuant to a marketing agreement or license), for filing in the office of the chief hearing clerk, the chief hearing clerk shall not accept same unless they have been certified to as true and correct by the secretary or other officer of such committee or supervisory body who is authorized by the provisions of the marketing agreement or license (as the case may be) to perform functions usually performed by a secretary.*† [Sec. 202]

900.223 Authenticated copies admissible in evidence. Copies of any documents described in § 900.221, when authenticated in accordance with title 28, section 661, of the United States Code, shall be admitted in evidence equally with the originals thereof, in any hearing or in court proceedings of any kind or nature whatsoever. Any such authenticated copy shall constitute *prima facie* evidence of, the due execution of the original document of which the authenticated copy purports to be a true copy, including the genuineness of the signature thereto, if any; the fact that such document was executed by the signer or signers of such document on the date such document purports to be executed; the fact (if so stated in such authentication) that the document so authenticated was filed in the office of the chief hearing clerk on the date so stated in such authentication; and in the case of any document purporting to be executed or filed by the secretary or other officer of any control committee or supervisory body, the fact that the signer thereof was, at the time of such execution, duly elected, qualified and acting as such secretary or officer, and in the case of any documents filed with respect to the election or appointment of any member of such committee or body, that the facts recited therein are true and that the persons described therein as having been elected or appointed were and are duly elected and acting members of such committee.*† [Sec. 300]

900.224 Proof of the giving of any notice pursuant to general regulations; how to be made. In all cases wherever any notice is required or authorized to be given by any general regulation (whether by personal service, issuing press releases, posting on bulletin board, by mailing, or by any other method), then proof of the giving of such notice shall be made by the affidavit of the employee of the Agricultural Adjustment Administration who gave such notice, or who has actual personal knowledge of the facts of the giving of such notice. Such affidavit shall be filed in the office of the chief hearing clerk and the filing thereof noted in his docket. Whenever such affidavit has been filed, a copy thereof authenticated pursuant to the provisions of title 28, section 661, of the United States Code shall (when the facts set forth in such affidavit are pertinent or material) be received in evidence upon any hearing, or in any court proceedings whatsoever,

*†For statutory and source citations, see note to § 900.220.

and shall constitute *prima facie* evidence of the truth of the facts recited in such affidavit.*† [Sec. 301]

900.225 Duties of chief hearing clerk. The chief hearing clerk shall perform all of his duties and conduct his office in accordance with all general regulations and administrative orders of the Secretary pertaining thereto, and in accordance with written instructions which may be issued from time to time by General Counsel,⁴ not in conflict with general regulations.*† [Sec. 400]

900.226 Public notice of the regulations in this subpart. Public notice of §§ 900.220–900.225 shall be given in the following manner:

(a) By posting a copy of the regulations in this subpart on the official bulletin board or boards in the main building of the Department of Agriculture in Washington, D. C.; and

(b) By issuing press releases relating to and describing the contents of said regulations, giving the date of their approval by the President and information as to where copies of same may be obtained.

(c) By forwarding by mail copies of such regulations to the governors of the several States of the United States and to the executive heads of the Territories of the United States.*† [Sec. 600]

SUBPART—EXECUTIVE ORDER LIMITATION ON IMPORTS OF AGRICULTURAL COMMODITIES

Section 900.501 Investigations with respect to imports of agricultural commodities—(a) Preliminary investigation and recommendation by Secretary of Agriculture. (1) The Secretary of Agriculture, proceeding upon his own motion or upon a request from any interested party, is hereby empowered to make such preliminary investigations with reference to matters within the scope of section 22 of the Agricultural Adjustment Act, as amended (Sec. 31, 49 Stat. 773, 1152, 50 Stat. 246; 7 U.S.C., Sup., 624) as he may deem advisable.

(2) The Secretary of Agriculture is hereby authorized to prescribe the manner in which requests for action under the said section 22 shall be submitted by interested parties.

(3) With reference to any preliminary investigation provided for in paragraph (a) of this section, the Secretary of Agriculture shall secure such information from interested parties as he may deem to be desirable and, on the basis of the information so obtained and such other information as may be available, shall determine whether the showing made or the facts disclosed warrant further investigation. The Secretary of Agriculture shall thereupon make his recommendations to the President in order that, in the light of such recommendations, the President may direct that no further action be taken, or may cause the United States Tariff Commission to make an immediate investigation as provided for in the said section 22.

(b) Investigation, hearing, and recommendation by Tariff Commission. When so directed by the President, the United States

* Solicitor of the Department.

Tariff Commission shall make an immediate investigation and shall give precedence thereto. Such investigations shall be governed by the following regulations:

(1) **Public notice.** Notice of the hearing in every such investigation shall be given by posting a copy of the notice or announcement thereof at the principal office of the Commission in Washington, D. C., and at its office in New York City. A copy of the notice will also be sent to press associations, to trade and similar organizations of producers, and to importers known to the Commission to have an interest in the subject matter of the investigation.

(2) **Hearings.** (i) Hearings shall be conducted by one or more Commissioners or such member or members of the staff as the Commission shall designate. The Agricultural Adjustment Administrator may have a representative or representatives at each hearing, who shall have the privilege of examining witnesses.

(ii) Any interested person may appear at the hearing, either in person or by representative, and produce evidence relevant and material to the matter or matters involved in the investigation.

(iii) Witnesses shall be sworn. No documentary evidence, except such as is legally subject to judicial notice, shall be accepted unless verified under oath by the person offering it as a true statement of the facts contained therein.

(iv) Evidence, oral or written, submitted in hearings, shall, upon the order of the Commission, be subject to verification from the books, papers, and records of the parties interested and from any other available sources.

(v) All hearings shall be stenographically reported. Copies of the transcript of the minutes of such hearings may be purchased from the official reporter.

(vi) The Commission may continue any hearings or order such rehearing as it may deem necessary for a full presentation of the facts involved in any investigation.

(3) **Confidential information.** (i) If witnesses desire to submit confidential information which the Commission considers to be of that character, the Commission shall accept such submission and respect its confidential character.

(ii) The Commission shall make such investigation in addition to the hearing as it deems to be necessary for a full disclosure and presentation of the facts. In such investigation the Commission may invoke all the powers granted to it under part 2, title III, of the Tariff Act of 1930 (46 Stat. 696ff; 19 U.S.C. 1330–1341).

(4) **Reports.** After the completion of its investigation the Tariff Commission shall make findings of fact, which shall include a statement of the steps taken in the investigation, and it shall transmit to the President a report of such findings and its recommendations based thereon, together with a transcript of the evidence submitted at the hearing, and it shall also transmit a copy of such report to the Secretary of Agriculture. (Sec. 22, as added by sec. 31, 49 Stat. 773, 1152, 50 Stat. 246; 7 U.S.C., Sup., 624) [E. O. 7233, Nov. 23, 1935]

PART 901—WALNUTS GROWN IN CALIFORNIA, OREGON, AND WASHINGTON

| Sec. | Sec. |
|---|---|
| 901.1 Excerpt from findings. | 901.5 Credit values of walnuts delivered to the Control Board. |
| 901.2 Definitions. | (a) Credit values. |
| 901.3 Control Board. | (b) Interest of packers in holdings of Control Board. |
| (a) Membership and organization. | 901.6 Disposal of surplus. |
| (b) Successor members. | (a) Sale of surplus merchantable walnuts. |
| (c) Powers and duties. | (b) Adjustment of surplus accounts upon increase of salable percentage. |
| (d) Procedure. | (c) Release of surplus walnuts to packers on September 1. |
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| (c) Estimated carry-over, consumptive demand, and production for succeeding years. | 901.9 Assessments for expenses. |
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| (e) Delivery of surplus to the Control Board. | (a) Information to Secretary. |
| (f) Credits to packers. | (b) Examination of books and records. |
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| (h) Application of credit values and of salable and surplus percentage to carry-over. | 901.12 Separability. |
| (i) Sale of surplus by packer. | 901.13 Derogation. |
| (j) Disposition of cash received in lieu of surplus walnuts. | 901.14 Amendments. |
| (k) Postponement of settlement for surplus upon filing bond. | 901.15 Duration of immunities. |
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| | 901.17 Effective time and termination. |
| | 901.18 Proceedings after termination. |
| | 901.19 Pack specifications for merchantable walnuts. |
| | 901.20 Quality grades. |

Section 901.1 Excerpt from findings. The Secretary, acting under the authority vested in him by section 8c of the Agricultural Adjustment Act (49 Stat. 753, 50 Stat. 246; 7 U.S.C., Sup., 608c), orders that the handling of walnuts grown in the States of California, Oregon and Washington, in the current of interstate or foreign commerce, or so as directly to burden, obstruct, or affect interstate or foreign commerce in such commodity, from and after October 15, 1935, shall be in conformity to and in compliance with the terms and conditions of this part.*† [Excerpt from findings]

* §§ 901.1 to 901.20, inclusive, issued under the authority contained in sec. 8c, 49 Stat. 753, 50 Stat. 246; 7 U.S.C., Sup., 608c.

† The source of §§ 901.1 to 901.20, inclusive, (except for amendments noted in the text,) is Order 1, Department of Agriculture, Oct. 11, 1935, effective Oct. 15, 1935. (Order Ser., AAA)

901.2 Definitions. As used in this part, the following terms have the following meanings:

(a) "Secretary" means the Secretary of Agriculture of the United States of America.

(b) "Packer" means any processor or distributor of unshelled walnuts.

(c) "Processor" means any person packing and handling unshelled walnuts.

(d) "Distributor" means any persons, other than a processor, handling unshelled walnuts which have not been subjected, in the hands of a previous holder, to compliance with the surplus control provisions hereinafter contained.

(e) "Person" means individual, partnership, corporation, association, or any other business unit.

(f) "To pack" means to bleach, clean, grade, or otherwise prepare for market in any manner whatsoever.

(g) "To handle" means to sell for shipment in, to ship in, or in any other way to put into the channels of trade in the current of interstate or foreign commerce or so as directly to burden, obstruct, or affect interstate or foreign commerce.

(h) "To ship" means to convey or cause to be conveyed by railroad, truck, boat or any other means whatsoever, but not as a common carrier for another person.

(i) "Act" means the Agricultural Adjustment Act approved May 12, 1933, as amended (48 Stat. 31; 7 U.S.C., Chapter 26).

(j) "Walnuts" means only walnuts of the "English" (*Juglans Regia*) varieties grown in the States of California, Oregon, or Washington.

(k) "Merchantable walnuts" means all unshelled walnuts meeting the specifications set forth in § 901.19 or such other specifications as may be prescribed by the Control Board and approved by the Secretary pursuant to § 901.4 (a) and meeting the requirements of the Federal Standard. "Cull walnuts" means all lots of unshelled walnuts which are below the Federal Standard and which cannot be brought up to that standard by standard commercial practices.

(l) A "Pack" means a specific commercial classification according to size of merchantable walnuts packed in accordance with specifications given in § 901.19 or such other specifications as may be prescribed by the Control Board and approved by the Secretary pursuant to § 901.4 (a).

(m) A "Quality" means the classification of any pack of walnuts according to appearance, edibility, color of kernels or such other characteristics as are employed in standard commercial practices, in accordance with the specifications given in § 901.20, and/or other specifications as may be hereafter prescribed by the Control Board and approved by the Secretary.

(n) "Credit value" means that value fixed by the Control Board pursuant to § 901.5 (a) for crediting the surplus walnuts of any pack and quality delivered to the Control Board.

(o) "Sheller" means any person engaged in the business of shelling walnuts for any purpose.

(p) "Federal Standard" means the regulation issued by the Secretary of Agriculture on August 22, 1932, or any future amendment thereof, said regulation now providing:

. . . on and after September 1, 1933, the following standards, indicating percentage of deteriorated or unsound nuts, will be used in judging legality of nuts under the terms of the Federal Food and Drugs Act:

| Variety | Unshelled percent |
|---------|----------------------|
| Walnuts | 10 |

(q) "Control Board" or "Walnut Control Board" means the Control Board established pursuant to § 901.3.

(r) "Crop year" means the twelve months from September 1 to the following August 31, both inclusive.

(s) "Surplus referable" to any walnuts handled or to be handled or sold to the Control Board means a quantity of walnuts of like pack and quality which bears the same ratio to such quantity of walnuts handled or to be handled or sold to the Control Board as the surplus percentage bears to the salable percentage.* [Art. I, Order 1, Oct. 11, 1935, as amended Sept. 23, 1936]

901.3 Control Board—(a) Membership and organization. A control board is hereby established consisting of nine (9) members. The members and their respective alternates shall be as follows:

- (1) H. C. Sharp, whose alternate is A. J. McFadden
- (2) Albert Arnold, whose alternate is Arthur Franken
- (3) C. Thorpe, whose alternate is W. T. Webber
- (4) Neil Harrison, whose alternate is Philip Bancroft
- (5) A. W. Porter, Jr., whose alternate is Frank A. Leib
- (6) R. W. Miller, whose alternate is W. Charles Anderson
- (7) F. C. Riggs, whose alternate is R. A. Duncan
- (8) C. Trunk, whose alternate is John E. Trunk
- (9) L. D. Batchellor whose alternate is H. R. Wellman

The aforesaid members shall hold office for a term ending with the first Monday in July, 1938, and until their successors are selected and qualified.

NOTE: Membership given as of June 1, 1938.

(b) Successor members. (1) The successors to the above-named members and their respective alternates shall be selected by the Secretary, and the successors to the first eight (8) members above-named and their respective alternates shall be selected by the Secretary from the respective nominees of groups hereinafter designated to make nominations or from among the individuals who are or represent members of the respective groups entitled to participate in the making of such nominations. Nominations shall be made in the following manner: The cooperative packers, doing business within the State of California, as a group, may nominate one (1) person as successor to the member and one (1) person as successor to the alternate first above-named; all packers, other than the cooperative packers, doing business within the State of California, as a group, may nominate one (1) person as successor to the member and one (1) person as successor to the alternate second above-named; a group of cooperative packers or other than cooperative packers doing business within the State of California, who during the preceding crop year handled more than fifty (50) percent of the walnuts packed within the State of California, and subjected to surplus control, may nominate one (1) person as successor to the member and one (1) person as suc-

cessor to the alternate third above-named; those growers of walnuts whose orchards are located in California, and who market their walnuts through cooperative packers, as a group may nominate one (1) person as successor to the member and one (1) person as successor to the alternate fourth above-named; all other growers, whose orchards are located in California, as a group may nominate one (1) person as successor to the member and one (1) person as successor to the alternate fifth above-named; those growers, whose orchards are located in California and whose walnuts were marketed during the preceding year through the aforesaid packer-group which handled more than fifty (50) percent of the walnuts packed within the State of California, and subjected to surplus control, as a group may nominate one (1) person as successor to the member and one (1) person as successor to the alternate sixth above-named; the packers, whose plants are located within the states of Washington and Oregon, as a group may nominate one (1) person as successor to the member and one (1) person as successor to the alternate seventh above-named; the growers, whose orchards are located within the States of Washington and Oregon, as a group may nominate one (1) person as successor to the member and one (1) person as successor to the alternate eighth above-named; the eight (8) members of the Control Board above referred to selected by the Secretary may submit nominations for successors to the member and alternate last above-named. If any of the first eight (8) groups above designated to make nominations fail to submit nominees in the number above specified on or before March 20 of any year, the Secretary may select the member or alternate without nominations; if nominations for the ninth member or alternate are not submitted, on or before April 15 of any year, the Secretary may select such member or alternate without nomination.

(2) Successors to the Control Board members herein designated shall be selected annually for a term of one (1) year, beginning with the first Tuesday after the first Monday in April, and shall serve until their respective successors shall be selected and shall qualify. The Control Board shall, not later than March 1 next ensuing, submit to the Secretary for his approval a method or methods for the nominations for membership on the Control Board, which method or methods shall assure to all packers and growers who are eligible to participate in such nominations adequate opportunity to suggest candidates and to indicate preferences for such nominations. Upon the approval of such method or methods by the Secretary, it shall be the duty of the Control Board to supervise the making of nominations in accordance therewith. Such method or methods shall provide that in the selection of the packer nominees the voting shall be weighted according to the proportionate tonnage of each packer packed during the crop year next preceding the year of such selection; and in the selection of grower nominees each bona fide grower eligible to vote shall be entitled to one vote, but any bona fide cooperative packer shall be entitled to cast all of the votes to which its individual members or the members of its local associations may be entitled in the selection of grower nominees. Any person selected as

a member or alternate of the Control Board shall qualify by filing a written acceptance of his appointment with the Secretary or his designated representatives.

(3) An alternate for a member of the Control Board selected in the manner prescribed in this paragraph shall act in the place and stead of such member (i) in his absence, or (ii) in the event of his removal, resignation, or disqualification, until a successor for his unexpired term has been selected.

(4) In the event any member of the Control Board and his alternate are both unable to attend a meeting of the Control Board, any alternate for any other member nominated by the same group that nominated the absent member may serve in the place and stead of the absent member and his alternate, or in the event such other alternate cannot attend, or there is no such other alternate, such member or, in the event of his disability or a vacancy, his alternate may designate, subject to the approval of the Secretary, a temporary substitute to attend such meeting. At such meeting such temporary substitute may act in the place and stead of such member. For the purposes of this subparagraph (4) a cooperative packer group and a cooperative grower group in the same State shall be considered the same group.

(5) To fill any vacancy occasioned by the removal, resignation, or disqualification of any member of the Control Board, a successor for his unexpired term shall be selected in the manner indicated in subparagraph (1) within thirty (30) days after such vacancy occurs. If a nomination is not made within such thirty (30) days, the Secretary may select a member to fill such vacancy.

(6) The members of the Control Board shall serve without compensation, but shall be allowed their necessary expenses, except that the last named member, and his successor, and his alternate shall also be entitled to a reasonable compensation to be fixed and paid by the Control Board, subject to the approval of the Secretary.

(7) The members of the Control Board shall select a chairman from their membership and all communications from the Secretary may be addressed to the chairman at such address as may from time to time be filed with the Secretary. The Board shall select such other officers and adopt such rules for the conduct of its business as it may deem advisable. The Board shall give to the Secretary or his designated agent and representatives the same notice of meetings of the Control Board as is given to members of the Board.

(c) Powers and duties. The Control Board shall have the following powers and duties:

(1) To administer, as hereinafter specially provided, the terms and provisions hereof.

(2) To make, in accordance with the provisions hereinafter contained, administrative rules and regulations.

(3) To receive, investigate, and report to the Secretary of Agriculture complaints of violations of this part.

(4) To recommend to the Secretary of Agriculture amendments to this part.

(5) To act as intermediary between the Secretary and any packer.

(6) To keep minute books and records which will clearly reflect all of its acts and transactions, and such minute books and records shall at any time be subject to the examination of the Secretary.

(7) To furnish to the Secretary such available information as he may request.

(8) To appoint such employees as it may deem necessary and to determine the salaries and define the duties of such employees.

(9) To perform such duties in connection with the administration of section 32 of the Act to amend the Agricultural Adjustment Act, and for other purposes (49 Stat. 774, 1151; 7 U.S.C., Sup., 612c) as may from time to time be assigned to it by the Secretary.

(10) To cause the books of the Control Board to be audited by one or more competent public accountants at least once for each crop year and at such other times as the Control Board deems necessary or as the Secretary may request, and to file with the Secretary copies of all audit reports made.

(d) Procedure. (1) All decisions of the Control Board, except where otherwise specifically provided, shall be by a majority vote of the members who have qualified by filing their written acceptance and who are eligible to vote.

(2) The Control Board may provide for voting by mail or telegram upon due notice to all members, and when any proposition is submitted for voting by such method, one dissenting vote shall prevent its adoption until submitted to a meeting of the Control Board.

(3) The members of the Control Board (including successors, alternates, or other persons selected by the Secretary), and any agent or employee appointed or employed by the Control Board, shall be subject to removal or suspension by the Secretary at any time. Each and every order, regulation, decision, determination, or other act of the Control Board shall be subject to the continuing right of the Secretary to disapprove of the same at any time, and, upon such disapproval, shall be deemed null and void except as to acts done in reliance thereon or in compliance therewith.

(e) Funds. All funds received by the Control Board pursuant to any provision of this part shall be used solely for the purpose therein specified and shall be accounted for in the following manner:

(1) The Secretary may require the Control Board and its members to account for all receipts and disbursements.

(2) Upon the removal or expiration of the term of office of any member of the Control Board, such member shall account for all receipts and disbursements made to and by him, and shall deliver all property and funds in his hands, together with all books and records in his possession, to his successor in office, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in such successor full title to all of the property, funds, and/or claims vested in such member pursuant to this part.*† [Art. II, Order 1, Oct. 11, 1935, as amended Sept. 23, 1936]

901.4 Control of distribution—(a) Authorized packs. Except as otherwise provided in § 901.8 for the sale of cull walnuts, no packer shall handle any unshelled walnuts other than merchantable walnuts, and no packer shall handle unshelled walnuts except those

*†For statutory and source citations, see note to § 901.1.

packed in accordance with the pack specifications contained in § 901.19 or in accordance with such other pack specifications as the Control Board, on application of any packer, and with the approval of the Secretary, may prescribe.

(b) **Salable percentage and surplus percentage.** On the basis of the carryover, estimated consumptive demand, and estimated production of merchantable walnuts, the salable percentage for the crop year September 1, 1935, to August 31, 1936, shall be seventy (70) percent and the salable percentage for the crop year September 1, 1936, to August 31, 1937, shall be seventy-five (75) percent, and the salable percentage for the crop year September 1, 1937, to August 31, 1938, shall be sixty-five (65) percent. The Secretary may, at any time on request of the Control Board (or if the Control Board shall fail so to request, then after reasonable notice and hearing by the Secretary on request of two or more packers who have handled during the preceding crop year at least ten (10) percent of the total tonnage handled by all packers during such crop year), and after a finding of fact that the merchantable walnuts available for sale will not be sufficient to supply the consumptive demand, increase the said salable percentage to conform with such new relation as may be found to exist between consumptive demand and available supply; Provided, however, That an increase of the salable percentage shall not be made after January 15, of any crop year unless the quantity of walnuts held unsold by the Control Board is sufficient to permit full delivery to packers as required by § 901.6 (b). Thirty (30) percent, being the difference between the salable percentage for the crop year ending August 31, 1936, and one hundred (100) percent shall be the "surplus percentage" for said crop year, and twenty-five (25) percent, being the difference between the salable percentage for the crop year ending August 31, 1937, and one hundred (100) percent, shall be the "surplus percentage" for said crop year, and thirty-five (35) percent, being the difference between the salable percentage for the crop year ending August 31, 1938, and one hundred (100) percent, shall be the "surplus percentage" for said crop year. The merchantable walnuts handled by any packer, in accordance with the provisions hereof, shall be deemed to be that packer's quota fixed by the Secretary, within the meaning of paragraph 5, section 8a of the Act (48 Stat. 674; 7 U.S.C. 608a (5)).

(c) **Estimated carry-over, consumptive demand, and production for succeeding years.** As a basis for recommending amendments to the paragraph (b) of this section for application to succeeding crop years, the Control Board shall estimate, not later than September 1 of each year, the quantity of merchantable walnuts to be produced during the coming crop year, herein referred to as the "estimated production", such estimate to be approved by at least a two-thirds ($\frac{2}{3}$) vote of the Control Board, and shall, likewise, estimate the total consumptive demand in the United States for merchantable walnuts for the coming crop year (on the basis of prices not exceeding the fair exchange value as defined in the Act), such estimate to be approved by at least a two-thirds ($\frac{2}{3}$) vote of the Control Board, and shall, likewise, ascertain or estimate the total carry-over of mer-

chantable walnuts from preceding crop years held by packers on August 1 preceding such crop year. The Control Board shall then make a report thereon to the Secretary with a recommendation of the salable percentage to be fixed for the coming crop year by amendment to paragraph (b) of this section, pursuant to the terms of the Act.

(d) Report of carry-over. Every packer, on or before August 15 of each year after 1935, in order to facilitate the administration hereof, shall file with the Control Board a sworn statement of the merchantable walnuts available for handling held by him on the first day of that month showing the quantity, pack, quality and location thereof.

(e) Delivery of surplus to the Control Board. No packer shall handle any quantity of merchantable walnuts except on condition that before or upon shipment thereof (except as provided in paragraphs (g), (i), (k) and (l) of this section) he deliver to the Control Board as trustee, at such places as the Control Board may designate, the surplus referable to each pack and quality of such merchantable walnuts handled or to be handled: Provided, however, That any packer shall not be required to deliver surplus on account of the handling of any walnuts for which the surplus obligation has been met by a previous holder. Any packer failing to deliver to the Control Board, as herein required, the surplus referable to any quantity of walnuts handled by him shall, on demand, pay in cash to the Control Board the credit value of the surplus referable to such quantity.

(f) Credits to packers. A packer shall be credited upon the books of the Control Board for the following:

(1) The credit value of all walnuts delivered to the Control Board as surplus referable to walnuts handled or to be handled, as surplus referable to walnuts sold to the Control Board, and in exchange for surplus walnuts previously delivered;

(2) The amount of any cash paid to the Control Board, in lieu of delivery of walnuts pursuant to the provisions hereof, and for deficiencies in credit values of walnuts substituted or exchanged;

(3) The amount of any excess credits to which he is entitled under paragraph (j) of this section.

A packer's credits shall be reduced for the following: The credit value of any walnuts returned to the packer; the amount of any cash refunded to the packer.

(g) Substitute deliveries and exchanges of surplus walnuts. Any packer, obligated to deliver to the Control Board surplus walnuts of any pack and quality, may make substitute delivery of an equal weight of merchantable walnuts of any other pack and quality; and any packer who has delivered walnuts in satisfaction of a surplus obligation may exchange an equal weight of merchantable walnuts of any pack and quality for merchantable walnuts theretofore so delivered by such packer to the Control Board and still held unsold by the Control Board. In connection with all such substitute deliveries and exchanges the packer shall make such cash payments to the Control Board or receive such refunds thereof as will result

in maintaining a deposit of such cash to his credit in an amount equal to any deficiency by which the total credit value of all walnuts theretofore delivered by him to the Control Board during such crop year shall be less than the total credit value of all walnuts which he was obligated to deliver. Any such money paid to the Control Board, and not refunded as herein provided, shall be considered as proceeds from the sale of surplus walnuts, except that it shall be held undistributed by the Control Board until the end of the crop year. The packer making such substitute deliveries or exchanges shall bear all costs thereof.

(h) **Application of credit values and of salable and surplus percentage to carry-over.** The credit values and the salable and surplus percentages established for any crop year shall continue in effect with respect to all walnuts produced in such crop year which are either handled by the packer or sold to the Control Board after the end of such crop year and before credit values and salable and surplus percentages are established for the succeeding crop year. After credit values and salable and surplus percentages are established for the new crop year, such newly established credit values and percentages shall apply to all walnuts thereafter handled by the packer or sold to the Control Board, including walnuts carried over from earlier crop years, for which the surplus obligation has not been previously met.

(i) **Sale of surplus by packer.** With respect to any lot of walnuts handled by a packer prior to January 1 of a crop year, the packer may, at or prior to the time of requesting the certificate required by § 901.7, file with the Control Board a written declaration that the surplus obligation with respect to such lot will be paid in cash. Thereupon and before shipment of such lot (except as provided in paragraph (k) of this section), such packer shall pay to the Control Board a sum equal to the credit value of the surplus percentage of such lot. Such sum shall be accepted by the Control Board in satisfaction of the packer's surplus obligation with respect to such lot of walnuts. Cash so paid to the Control Board shall not be subject to refund to the packer paying same except upon an increase in the salable percentage, but may be used for the purchase of walnuts as provided in paragraph (j) of this section. With respect to any walnuts for which certificates are obtained, or which are shipped, prior to the approval of credit values by the Secretary, the packer need not file the declaration or make the payment of the cash provided for herein, earlier than three days after the credit values have been so approved by the Secretary.

(j) **Disposition of cash received in lieu of surplus walnuts.** Any money received by the Control Board pursuant to paragraphs (e) and (i) of this section (including any such money payment of which has been deferred pursuant to paragraph (k) of this section) shall be used by said Control Board to purchase from packers, as provided in this paragraph, merchantable walnuts held by them and not then required to be delivered to the Control Board: Provided, however, That the packers from whom such purchases are made shall deliver to the Control Board the surplus referable to the walnuts

purchased. At any time before January 15 of a crop year any packer having made cash payment in lieu of delivering surplus walnuts of any pack and quality pursuant to the provisions of paragraphs (i) and (k) of this section may offer to sell to the Control Board an equal weight of merchantable walnuts of any pack and quality having a credit value per pound equal to or higher than the credit value of the walnuts represented by such cash payment. The Control Board shall thereupon purchase the walnuts so offered in a quantity not to exceed the total quantity of the walnuts represented by such cash payment. For all walnuts so purchased the Board shall pay the credit value of the walnuts represented by such cash payment. In the event any of the walnuts so purchased have a higher credit value than the walnuts represented by such cash payment, the excess shall be credited to the packer. Any of the money referred to in the first sentence of this paragraph remaining in the possession of the Control Board on or after January 15 of a crop year shall be used to purchase, at their credit values, from packers who have met their surplus obligation, any merchantable walnuts then held by them which are not then required to be delivered to the Control Board and which such packers shall desire so to sell. If such funds then remaining are insufficient to purchase all such walnuts, the Control Board shall offer to purchase such walnuts by apportioning such remaining funds ratably among such packers in proportion to the quantity of their respective unsold holdings of merchantable walnuts at date of offer, which such packers offer to sell, Provided That any packer may offer all or any part of his unsold holdings. In the event the salable percentage should be increased after the purchase by the Control Board of walnuts from packers as herein provided and there should not remain in the possession of said Control Board cash deposits in a sum sufficient to make refunds in accordance with § 901.6, the packers by whom such walnuts were sold to the Control Board shall be required to refund the purchase price thereof ratably in proportion to the amounts of their respective sales to the extent necessary to refund to the Control Board a total amount sufficient to enable the Control Board to make the refunds required by § 901.6 and the Control Board shall redeliver to such packers the walnuts purchased by such refunded amounts, or other walnuts of equivalent credit value. All purchases of walnuts by the Control Board pursuant to the terms of this paragraph shall be subject to the conditions of refund as above provided. Any such cash deposits that may remain at the close of the crop year over and above those used for completed purchases as herein provided shall become part of the holdings of the Control Board in the same manner and for the same purposes as the proceeds of surplus walnuts disposed of by said Control Board.

(k) Postponement of settlement for surplus upon filing bond. Compliance by any packer with the requirements of paragraph (e) of this section as to the times when he shall deliver to the Control Board surplus walnuts, and with the requirements of paragraph (i) of this section as to the times when he shall make the cash payments therein required, shall be deferred so that such deliveries and payments may be made at any time on or before December 31 of such crop year, upon

his executing and delivering voluntarily to the Control Board, before he handles any merchantable walnuts of such crop year, a written undertaking in terms acceptable to the Control Board, to meet, in accordance with the provisions hereof, not later than December 31, the following requirements in respect to the quantity of each pack and quality handled or to be handled on or before said date:

(1) As to walnuts with respect to which declarations pursuant to paragraph (i) of this section have not been filed, to deliver to the Control Board a quantity of walnuts of a total weight equal to the surplus referable to such walnuts so handled or to be handled; and, in the event the total credit value of the walnuts so delivered is less than the total credit value of such surplus referable, to pay in cash the amount of such deficiency, or, in the event of failure so to deliver such quantity of walnuts or any part thereof, to pay to the Control Board in cash a sum equal to the credit value of such quantity or part thereof which such packer so fails to deliver, and

(2) As to walnuts with respect to which declarations pursuant to paragraph (i) of this section have been filed, to pay to the Control Board such cash, as may be due under paragraph (i) of this section on account of such walnuts.

Such undertaking shall be secured by a bond or bonds to be filed with the Control Board in terms and with a surety or sureties acceptable to the Control Board, in the penal amount or amounts stated below conditioned upon full compliance with such undertaking. Such bond or bonds shall, at all times during such crop year up to December 31, be in such penal amount or amounts that the aggregate thereof shall at all such times equal the credit value of the undelivered surplus referable to the quantity of merchantable walnuts theretofore handled (except those with respect to which declarations have been filed pursuant to paragraph (i) of this section) during such crop year by the packer filing same, plus any unpaid cash obligation under paragraph (i) of this section. The costs of such bond or bonds shall be borne by the packer delivering such bond or bonds.

(I) Exemption of portions of regional production area. The requirements of paragraph (e) of this section shall not be applicable to walnuts produced and packed during the crop year ending August 31, 1937, within the States of Oregon and Washington. Such exemption shall also apply to walnuts produced in said States during such year and packed elsewhere, if the packer handling such walnuts establishes to the satisfaction of the manager of the Control Board, or such others as the Board may designate for that purpose, that such walnuts were so produced in said States. A packer of any walnuts so exempted may, however, at his option, on or before January 15 of such crop year, deliver as surplus walnuts to the Control Board merchantable walnuts so exempted of any pack or quality in a quantity not to exceed what, were they not so exempted, would be the surplus referable to the quantity of merchantable walnuts handled by him.* [Art. III, Order 1, as amended Sept. 23, 1936, and Sept. 23, 1937]

901.5 Credit values of walnuts delivered to the Control Board—(a) Credit values. The Control Board shall in 1935 within five (5) days after the effective date of this part, and thereafter on or

before October 15 of each year, establish, subject to the approval of the Secretary, credit values for each pack and quality of merchantable walnuts, including such special packs as may be prescribed pursuant to § 901.4 (a). The establishment of credit values shall require a vote of at least two-thirds ($\frac{2}{3}$) of the members of the Control Board. To aid the Secretary in determining whether to grant or withhold such approval, the Control Board shall furnish to the Secretary the data upon which it acted in establishing such credit values and such other data pertaining thereto as the Secretary may request. Such credit values shall provide reasonable differentials for the different packs and qualities such as will reflect the normal differences in market prices thereof.

(b) **Interest of packers in holdings of Control Board.** The equitable interest of each packer in the holdings of the Control Board shall be in the proportion of the net credits of such packer to the total net credits of all packers. For the purpose of this paragraph, "holdings of the Control Board" means the merchantable walnuts held by or for it and the net proceeds from the sale, exchange, or other disposition thereof by the Control Board, and all cash received by the Control Board pursuant to § 901.4, which has not been expended or refunded in accordance with the provisions of said § 901.4; but shall not include such moneys, if any, as may be received by the Control Board as diversion payments in connection with the encouragement of exportation or encouragement of domestic consumption pursuant to the provisions of section 32 of the Act to amend the Agricultural Adjustment Act and for other purposes (49 Stat. 774; 7 U.S.C., Sup., 612c), as amended. The Control Board shall from time to time distribute the cash "holdings of the Control Board", ratably to the packers in accordance with their respective interests herein, except that no cash which under the provisions of § 901.4 is to be or may be used to effect purchases from packers or which under the provisions of said section is to be held undistributed until the end of a crop year shall be distributed before the end of such crop year.* [Art. IV, Order 1, as amended Sept. 23, 1936]

901.6 Disposal of surplus—(a) Sale of surplus merchantable walnuts. The Control Board shall have power and authority from time to time to sell or dispose of any and all of its holdings of merchantable walnuts upon the best terms and for the highest price obtainable consistent with the ultimate disposition of the surplus, subject to the following conditions:

(1) No such merchantable walnuts shall be sold as unshelled walnuts (except to shellers with proper safeguards to prevent such walnuts entering the channels of trade as unshelled walnuts) in the United States except that the Control Board may make sales to the Federal Surplus Commodities Corporation or any other governmental agency or may sell to charitable institutions for charitable purposes, surplus walnuts, with proper safeguards to prevent such walnuts thereafter from entering the channels of trade.

(2) In case such merchantable walnuts are sold for export to any foreign country, such sales shall be made only on execution of a proper agreement to prevent reimportation into the United States,

*For statutory citation, see note to § 901.1.

and in case of export to Canada or Mexico they shall be sold only on the basis of a delivered price, duty paid.

(3) The Control Board shall not, prior to January 15 of any crop year, dispose of (other than by release to the respective packers) more than fifty (50) percent of the surplus walnuts delivered to it.

(b) Adjustment of surplus accounts upon increase of salable percentage. Upon any increase in the salable percentage and corresponding decrease in the surplus percentage, the surplus obligation of each packer with respect to the walnuts handled by him shall be recomputed in accordance with such revised salable and surplus percentages. Thereupon the Board shall return to the packer such cash theretofore paid by him and such walnuts theretofore delivered by him on account of his original surplus obligation as may be in excess of his surplus obligation in cash and walnuts respectively as so recomputed. In the event the Board no longer holds walnuts delivered by a particular packer in sufficient quantity to make full redelivery to such packer of all the walnuts required to be redelivered to him, the Board shall supply any deficiency by delivering to such packer a like quantity of other walnuts selected by the packer from the walnuts then held unsold by the Board. If the delivery of walnuts to a packer as required hereunder reduces such packer's total credits to an amount less than the credit value of his adjusted surplus obligation, any deficiency shall be paid in cash by the packer.

(c) Release of surplus walnuts to packers on September 1. If the combined carry-over and estimated production for any coming crop year be less than the estimated consumptive demand in the United States for such year, the Control Board shall release on September 1 of such year insofar as its holdings permit, such additional quantity of the merchantable walnuts theretofore delivered as surplus by packers or purchased by the Control Board, then held unsold by the Control Board as, when added to the combined carry-over and estimated new crop, will be sufficient to supply the estimated consumptive demand for the coming year; but in no case shall the Control Board release a greater quantity of its holdings than is represented by the difference between the estimated consumptive demand and the combined carry-over and estimated new crop. The walnuts to be released hereunder shall be delivered to the several packers in such quantities that the quantities of walnuts represented by their net credits (whether arising from payments of cash or deliveries of walnuts) remaining after such release shall be as nearly as possible in proportion to the quantities of walnuts represented by their respective surplus obligations. The walnuts released to each packer shall be from the particular packs and qualities delivered to the Board by such packer; or in the event the Board no longer holds walnuts delivered by a particular packer in sufficient quantity to make full redelivery to such packer of all of the walnuts required to be redelivered to him, the Board shall supply any deficiency by delivering to such packer a like quantity of other walnuts selected by the packer from the walnuts then held unsold by the Board. If the delivery of walnuts to a packer as required hereunder reduces such

packer's total credits to an amount less than the credit value of the unreleased portion of his surplus obligation, any deficiency shall be paid in cash by the packer. A release of walnuts pursuant to this paragraph shall be subject to the prior approval of the Secretary.* [Art. V, Order 1, as amended Sept. 23, 1936]

901.7 Certification of shipments—(a) Issuance and contents of certificate. Every packer, at his own expense, shall obtain a certificate for each lot of merchantable walnuts handled by him and all lots of merchantable walnuts which he delivers to the Control Board. Said certificate shall be issued by inspectors designated by the Control Board. All such certificates shall show, in addition to such other requirements as the Control Board may specify, the identity of the packer, the quantity, quality, and pack of merchantable walnuts in such lot and that the walnuts covered by such certificate conform to the Federal Standard. The Control Board may direct that such certificate be not issued to any packer who has failed to deliver or otherwise account for his surplus obligation in accordance with the terms hereof.

(b) Copies of certificate. Copies of each such certificate shall be furnished by the inspector to the packer and the Control Board, and each lot handled or delivered to the Control Board shall be so marked as to indicate that same has been inspected as herein required.* [Art. VI, Order 1, Oct. 11, 1935, as amended Sept. 23, 1936]

901.8 Sale of cull walnuts. Anything herein to the contrary notwithstanding, any packer may sell or deliver cull walnuts to any sheller: Provided, That, at the time each such delivery is made, the packer handling such walnuts shall furnish the Control Board with a certificate, in form specified by the Control Board, detailing the amount of cull walnuts and to whom sold and delivered.*† [Art. VII]

901.9 Assessments for expenses. Every packer shall pay to the Control Board upon demand such packer's pro rata share, as approved by the Secretary, of the expenses in the amount of forty-five thousand (\$45,000) dollars (which amount the Secretary has found will necessarily be incurred by the Control Board during the crop year ending August 31, 1936), or expenses in such other amount as the Secretary may later find will necessarily be incurred by the Control Board during the said crop year, for the maintenance and functioning of the Control Board during said crop year as set forth in this part. Each packer's share of such expenses shall be that proportion thereof which the total quantity of merchantable walnuts handled by the packer within his salable percentage during said year is of the total quantity of merchantable walnuts handled by all the packers within their salable percentages during said year, and such pro rata share is hereby approved by the Secretary. The initial assessment upon each packer shall be nine (9) cents per bag of one hundred (100) pounds, or its equivalent, handled by said packer, and said initial assessment shall be adjusted from time to time by the Control Board, with the approval of the Secretary, in order to provide funds sufficient in amount to cover any later finding

*†For statutory and source citations, see note to § 901.1.

by the Secretary of estimated expenses or the actual expenses of the Control Board during said crop year.

Subsequent to the crop year ending August 31, 1936, every packer shall pay to the Control Board, upon demand, such packer's pro rata share, as approved by the Secretary, of such expenses as the Secretary may find will necessarily be incurred by the Control Board, during any period specified by the Secretary, for the maintenance and functioning of the Control Board as set forth in this part.

Subsequent to the crop year ending August 31, 1937, every packer shall pay to the Control Board, upon demand, such packer's pro rata share as is approved by the Secretary, of such expenses as the Secretary may find will necessarily be incurred by the Control Board, during any period specified by the Secretary, for the maintenance and functioning of the Control Board as set forth herein. Each packer's share of such expenses shall be that proportion thereof which the total credit value of his surplus obligation arising from the handling of merchantable walnuts and from the sale of merchantable walnuts to the Control Board (including any surplus walnuts delivered to the Board or cash paid in lieu thereof in respect to walnuts to be handled) during any crop year is of the total credit value of the surplus obligations of all the packers arising from the handling and sale to the Board of merchantable walnuts (including any surplus walnuts delivered to the Board or cash paid in lieu thereof in respect to walnuts to be handled) during the same crop year, and such pro rata share is hereby approved by the Secretary. The initial assessment upon each packer shall be one (1) percent of the total credit value of each packer's surplus obligation for each crop year, and said initial assessment shall be adjusted from time to time by the Control Board, with the approval of the Secretary, in order to provide funds sufficient in amount to cover any later finding by the Secretary of estimated expenses or the actual expenses which the Secretary finds were necessarily incurred for the maintenance and functioning of the Control Board during any crop year.* [Art. VIII, Order 1, Oct. 11, 1935, as amended Sept. 23, 1937]

901.10 Books and records—(a) Information to Secretary. All packers shall severally from time to time, upon the request of the Secretary, furnish him with such information as he finds to be necessary to enable him to ascertain and determine the extent to which this part has been carried out or has effectuated the declared policy of the Act, and with such other information as he finds to be necessary to determine whether or not there has been any abuse of the privilege of exemption from the anti-trust laws. Such information shall be furnished in accordance with forms of reports to be prescribed by the Secretary.

(b) Examination of books and records. For the purpose of ascertaining the correctness of any report made to the Secretary pursuant to this section, or for the purpose of obtaining the information required in any such report, where it has been requested and has not been furnished, the Secretary or his representatives may examine such books, papers, records, copies of income tax reports,

accounts, correspondence, contracts, documents, or memoranda as he deems relevant and which are within the control of any packer from whom such report was requested, or of any person having, either directly or indirectly, actual or legal control of or over such packer, or of any subsidiary of any such packer or person.*† [Art. IX]

901.11 Liability of Control Board members. No member of the Control Board nor any employee thereof shall be held responsible individually in any way whatsoever to any packer or any other person for errors in judgment, mistakes, or other acts either of commission or omission by such member or employee, except for acts of dishonesty.*† [Art. X]

901.12 Separability. If any provision of this part is declared invalid or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this part and/or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.*† [Art. XI]

901.13 Derogation. Nothing contained in this part is or shall be construed to be in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the Act or otherwise, and/or in accordance with such powers to act in the premises whenever such action is deemed advisable.

Nothing contained in this part shall be construed as requiring packers, under § 901.4(e), to account to the Control Board for surplus walnuts in respect to such handling of walnuts as is so wholly intrastate in character as not directly to burden, obstruct or affect interstate or foreign commerce in walnuts.

Nothing contained in this part shall be deemed to affect, waive or terminate any right, duty, obligation or liability which has arisen or which may hereafter arise in connection with, by virtue of, or pursuant to any provision of the said part, or affect or impair any right or remedy of the Secretary in connection therewith, except as herein indicated, expressly or by necessary implication.* [Art. XII, Order 1, Oct. 11, 1935, as amended Sept. 23, 1937]

901.14 Amendments. Amendments to this part may, from time to time, be proposed by the Control Board.*† [Art. XIII]

901.15 Duration of immunities. The benefits, privileges, and immunities conferred by virtue of this part shall cease upon its termination except with respect to acts done under and during the existence of this part, and benefits, privileges, and immunities conferred by this part upon any person shall cease upon its termination as to such person, except with respect to acts done under and during the existence of this part.*† [Art. XIV]

901.16 Agents. The Secretary may by a designation in writing name any person, including any officer or employee of the Government, or name any Bureau or Division in the Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this part.*† [Art. XV]

901.17 Effective time and termination. This part shall become effective at such time as the Secretary may declare above his signature

*†For statutory and source citations, see note to § 901.1.

attached hereto, and shall continue in force until terminated in one of the ways hereinafter specified. The Secretary may at any time terminate this part by giving at least one (1) day's notice by means of a press release or by any other means which the Secretary may determine.

The Secretary shall terminate or suspend the operation of this part, or of any provision thereof, whenever he finds that said part, or such provision thereof, obstructs or does not tend to effectuate the declared policy of the Act.

The Secretary shall terminate this part at the end of any crop year whenever he finds that such termination is favored by a majority of the producers of walnuts who during the preceding crop season, have been engaged in the production for market of walnuts in the States of California, Oregon, and Washington: Provided, That such majority have during such period produced for market more than fifty (50) percent of the volume of such walnuts produced for market within said States, but such termination shall be effective only if announced on or before August 1.

This part shall in any event terminate whenever the provisions of the Act authorizing it cease to be in effect.*† [Art. XVI, secs. 1, 2]

901.18 Proceedings after termination. (a) Upon the termination of this part, the members of the Control Board then functioning shall continue as joint trustees, for the purpose of this part, of all funds and property then in the possession or under the control of the Board, including claims for any funds unpaid or property not delivered at the time of such termination. Said trustees shall continue in such capacity until discharged by the Secretary, shall from time to time account for all receipts and disbursements and/or deliver all funds and property on hand, together with all books and records of the Control Board and the joint trustees, to such person as the Secretary shall direct, and shall, upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title to all of the funds and/or claims vested in the Control Board or the joint trustees pursuant to this part. Any funds collected for expenses pursuant to § 901.9 and held by such joint trustees or such person, over and above amounts necessary to meet outstanding obligations and the expenses necessarily incurred by the joint trustees or such other person in the performance of their duties hereunder, shall as soon as practicable after the termination of this part be returned to the packers pro rata in proportion to their contributions made thereto pursuant to this part. Each and every order, determination, decision or other act of such joint trustees shall be by a two-thirds ($\frac{2}{3}$) vote thereof.

(b) Any person to whom funds, property and/or claims have been delivered by the Control Board or its members upon direction of the Secretary as herein provided shall be subject to the same obligations and duties with respect to said funds, property and/or claims as are hereinabove imposed upon the members of said Board or upon said joint trustees.*† [Art. XVI, sec. 3]

901.19 Pack specifications for merchantable walnuts.

CALIFORNIA PACKS

No. 1 Grade or No. 1 Soft Shell. Walnuts produced from seedling trees and/or walnuts not properly classified in any of the following varietal packs, and in which not over 12 percent by count pass through a round opening $7\frac{4}{64}$ inches in diameter.

Large Budded. Walnuts produced from trees of the Placentia Perfection and/or closely similar varieties, and in which not over 12 percent by count pass through a round opening $7\frac{9}{64}$ inches in diameter.

Medium Budded. Walnuts produced from trees of the Placentia Perfection and/or closely similar varieties, and all of which pass through a round opening $7\frac{9}{64}$ inches in diameter and in which not over 12 percent by count can pass through a round opening $6\frac{9}{64}$ inches in diameter.

Large Concords. Walnuts of the Concord variety and of the same size specifications as given for Large Budded.

Fancy Concords. Walnuts of the Concord variety, all of which pass through a round opening $7\frac{9}{64}$ inches and not over 12 percent by count, pass through a round opening $7\frac{4}{64}$ inches in diameter.

Large Eurekas. Walnuts of the Eureka variety and of the same size specifications as given for Large Budded.

Fancy Eurekas. Walnuts of the Eureka variety and of the same size specifications as given for the Fancy Concord Grade.

Large Franquettes. Walnuts of the Franquette variety and of the same size specifications as given for Large Budded.

Fancy Franquettes. Walnuts of the Franquette variety and of the same size specifications as given for the Fancy Concord Grade.

Large Mayettes. Walnuts of the Mayette variety and of the same size specifications as given for the Large Budded.

Fancy Mayettes. Walnuts of the Mayette variety and of the same size specifications as given for the Fancy Concord Grade.

Large Paynes. Walnuts of the Payne variety and of the same size specifications as given for Large Budded.

Fancy Paynes. Walnuts of the Payne variety and of the same size specifications as given for the Fancy Concord Grade.

Baby Grade. Walnuts of any of the above-mentioned varieties may be packed under the designation of Baby Grade of that variety provided all such walnuts pass through a round opening $7\frac{4}{64}$ inches in diameter and not over 12 percent by count pass through a round opening $6\frac{9}{64}$ inches in diameter. Baby size walnuts of the Eureka, Franquette, or Payne varieties when packed as such shall be designated as "Long Type Baby Walnuts": Provided, however, That it shall not be obligatory on any packer to pack separately the baby size of the different varieties.

No pack of any of the above-mentioned varieties, except the No. 1 Grade and Baby Grades, shall contain in excess of 10 percent by count of walnuts of a dissimilar variety.

All of the walnuts contained in the foregoing packs shall be graded for size and culled for removal of external defects.

OREGON AND WASHINGTON PACKS

Oregon and Washington walnuts may be packed in any of the pack specifications above described for California walnuts, and in addition thereto, the following pack specifications which apply only to walnuts grown in Oregon or Washington.

Large Soft Shells. Walnuts produced from seedling trees and/or walnuts not properly classified in any of the varietal packs, and in which not over 12 percent by count pass through a round opening $7\frac{9}{64}$ inches in diameter.

Fancy Soft Shells. The same as Large Soft Shells except that all pass through a round opening $7\frac{9}{64}$ inches in diameter and not over 12 percent by count can pass through a round opening $7\frac{4}{64}$ inches in diameter.

Standard or Medium Soft Shells. The same as Fancy Soft Shells except that all pass through a round opening $7\frac{4}{64}$ inches in diameter and not over 12 percent by count pass through a round opening $6\frac{0}{64}$ inches in diameter.

Standard or Medium Franquettes. Walnuts of the Franquette variety (subject to a 10% tolerance for dissimilar varieties) and of the same size specifications as given above for Standard or Medium Soft Shells.

All of the walnuts contained in the foregoing packs shall be graded for size and called for removal of external defects.* [Exhibit A, Order 1, Oct. 11, 1935, as amended Sept. 23, 1936, and Sept. 23, 1937]

901.20 Quality grades. The quality grade of any lot of walnuts shall be the highest quality grade to which such lot is eligible under the following specifications:

CALIFORNIA QUALITY GRADES

First Quality Grade walnuts shall contain not less than 90 percent (by count) of kernels practically free from defects. At least 55 per cent of said minimum percentage of sound kernels shall be light in color in accordance with the official color chart issued by the Walnut Control Board.

Second Quality Grade walnuts shall contain not less than 86 percent (by count) of kernels practically free from serious defects. At least 35 percent of said minimum percentage of sound kernels shall be light in color in accordance with the official color chart issued by the Walnut Control Board.

Third Quality Grade walnuts shall include all walnuts meeting the Federal Standard and testing below the requirements for Second Quality Grade.

In determining the percentage of sound kernels in a lot of walnuts for qualification as of First Quality Grade, all walnuts the kernels of which show the following defects shall not be considered as sound:

Insect Damage. Kernels affected in any way by codling moth larvae, ants, moths or beetles commonly attacking stored foods products, or any other insects.

Moldy Kernels. Kernels showing on their surface mold readily discernible to the eye.

Shriveled Kernels. Walnuts which contain no kernel (blanks) or in which the kernel is noticeably shrunken, leathery, tough or unpalatable, as distinguished from kernels which are plump and fully developed.

Rancid Kernels. Kernels which have a decomposed appearance or a rancid taste.

Black Kernels. Kernels as dark or darker in color than those illustrated in row "E" of the official color chart of the Walnut Control Board.

In determining the percentage of sound kernels in a lot of walnuts for qualification as of Second Quality Grade, all walnuts showing the defects described above shall not be considered as sound, except that—

Partially Moldy Kernels. Kernels affected by white or gray mold which does not affect more than one-quarter of the entire kernel will be classed as sound, and

Partially Shriveled Kernels. Kernels which are partially shriveled but where such shrivelling does not affect more than one-quarter of the entire kernel, shall be classed as half sound; that is, two such kernels shall be counted as one sound and one defective kernel, Provided, however, That in any one hundred walnuts not over twenty with kernels one-quarter or less shriveled shall be combined as 10 percent sound and 10 percent defective.

OREGON-WASHINGTON QUALITY GRADES

First Quality Grade walnuts shall contain not less than 90 percent (by count) of kernels practically free from defects. At least 55 percent of said minimum percentage of sound kernels shall be light in color in accordance with the official color chart issued by the Walnut Control Board.

Second Quality Grade walnuts shall not contain more than 10 percent (by count) of moldy, rancid, blank, black, or half-shriveled or insect damaged kernels all combined, and not more than an additional 20 percent (by count) of kernels which are from one-quarter to one-half shriveled. Second Quality Grade walnuts shall also contain not less than 30 percent (by count) of kernels which, in addition to being wholly sound, are light in color in accordance with the official color chart issued by the Walnut Control Board.

Third Quality Grade walnuts shall include all walnuts meeting the Federal Standard and testing below the requirements for Second Quality Grade.

In determining the percentage of sound kernels in a lot of walnuts for qualification as of First Quality Grade, all walnuts the kernels of which show the following defects shall not be considered as sound:

Insect Damage. Kernels affected in any way by codling moth larvae, ants, moths or beetles commonly attacking stored food products, or any other insects.

Moldy Kernels. Kernels showing on their surface any kind or amount of mold except kernels affected by white or light gray mold which does not cover over one-quarter of the kernel.

Rancid Kernels. Kernels which have a decomposed or rancid flavor.

Shriveled Kernels. Walnuts which contain no kernel (blanks) or in which the kernel is one-half or noticeably shrunken, leathery or tough.

Kernels which are one-eighth or more shriveled, but less than one-half shriveled, shall be considered as one-half of one percent sound.

Kernels which are less than one-eighth shriveled shall be considered sound except that not over 10 percent (by count) of such defects shall be allowed.

Black Kernels. Kernels as dark or darker in color than those illustrated in row "E" of the official color chart of the Walnut Control Board.

In determining the percentage of sound kernels in a lot of walnuts for qualification as of Second Quality Grade, all walnuts showing the defects described above shall not be considered as sound, except that there shall be no limit on the percentage of kernels which are one-eighth or less shriveled and which may be counted as sound.* [Exhibit B, Order 1, Oct. 11, 1935, as amended Sept. 23, 1937]

PART 902—ORANGES AND GRAPEFRUIT GROWN IN CALIFORNIA AND ARIZONA

| Sec. | | Sec. |
|-------|---|---|
| 902.1 | Excerpt from findings. | (c) Allotments. |
| 902.2 | Definitions. | (d) Distribution of benefits. |
| 902.3 | Administrative bodies. (a) Naming of committees. (b) Membership of Growers' Advisory Committee. (c) Membership of Distribution Committee. (d) Successor members. (e) Powers and duties. (f) Voting procedure. | (e) Exchange for State allotments. |
| 902.4 | Expenses and assessments. | 902.6 Approval and review by the Secretary. |
| 902.5 | Limitation and proration. (a) Limitation of shipment. (b) Prorate bases. | 902.7 Effective time and termination. 902.8 Proceedings after termination. 902.9 Duration of immunities. 902.10 Agents. 902.11 Derogation. 902.12 Liability of agency members. 902.13 Separability. 902.14 Effect of order upon prior actions. |

Section 902.1 Excerpt from findings. The Secretary of Agriculture, acting under the authority vested in him by section 8c of the Agricultural Adjustment Act (49 Stat. 753, 50 Stat. 246; 7 U.S.C., Sup., 608c), orders that the handling of oranges and grapefruit grown in the States of California and Arizona, in the current of interstate or foreign commerce, or so as directly to burden, obstruct, or affect interstate or foreign commerce in such commodity, from and after January 13, 1936, shall be in conformity to and in

compliance with the terms and conditions of this part.*† [Excerpt from findings]

*§§ 902.1 to 902.14, inclusive, issued under the authority contained in sec. 8c, 49 Stat. 753, 50 Stat. 246; 7 U.S.C., Sup., 608c.

†The source of §§ 902.1 to 902.14, inclusive, (except for the amendment noted in the text,) is Order 2, Department of Agriculture, Jan. 4, 1936, effective Jan. 13, 1936. (Order Ser., AAA)

902.2 Definitions. As used in this part, the following terms shall have the following meanings:

(a) "Fruit" means oranges or grapefruit, or both, grown in the States of California or Arizona.

(b) "Variety of fruit" means Navel oranges (including miscellaneous horticultural varieties), or Valencia oranges, or grapefruit.

(c) "To ship" means to handle for market or to convey or cause to be conveyed by rail, truck, boat, or any other means whatsoever (except by express or parcel post), but not as a common carrier of fruit owned by another person, in the current of interstate or foreign commerce from points in either of the States of California or Arizona to any part in Continental United States and/or Canada, or so as directly to burden, obstruct, or affect such interstate or foreign commerce. To ship does not include the act of a grower in merely transferring ownership or control to a shipper at the grower's grove.

(d) "Shipper" means any person who ships fruit.

(e) "Person" means any individual, partnership, firm, corporation, association, or any other business unit.

(f) "Carload" means a carload of 462 packed boxes of fruit.

(g) "Secretary" means the Secretary of Agriculture of the United States.

(h) "Act" means the Agricultural Adjustment Act, approved May 12, 1933 (48 Stat. 31; 7 U.S.C. Chapter 26), as amended.

(i) "Marketing Agreement" means the Marketing Agreement for Oranges and Grapefruit Grown in the States of California and Arizona, upon which hearings were held at Washington, D. C., September 7, 1933, and at Los Angeles, California, October 9, 1935, entered into between certain shippers and the Secretary, effective December 14, 1933, as amended on March 22, 1935, effective March 26, 1935.

(j) The Growers' Advisory Committee and the Distribution Committee hereinafter established may be designated as the "California-Arizona Orange Grapefruit Agency", and sometimes referred to herein as the "agency."

(k) "Fiscal year" means the twelve-month period ending October 31.*† [Art. I]

902.3 Administrative bodies—(a) Naming of committees. The terms and provisions of this part shall be administered, as herein-after specifically provided, by the Growers' Advisory Committee and the Distribution Committee which have heretofore administered the marketing agreement and the license, as amended, for shippers of oranges and grapefruit grown in the States of California and Arizona, which was issued by the Secretary on December 14, 1933.

*†For statutory and source citations, see note to § 902.1.

(b) Membership of Growers' Advisory Committee. The members and alternates of the Growers' Advisory Committee, who shall be growers of fruit, shall be as follows:

| Members | |
|---------------------------|-------------------------|
| D. G. Arbuthnot, La Verne | A. D. Knight, Redlands |
| H. A. Lynn, Riverside | Allen Break, Bryn Mawr |
| L. E. Lyon, Anaheim | Fred Krinard, Riverside |
| C. E. Myers, Covina | C. M. Brown, Redlands |

| Alternates | |
|----------------------------|--------------------------|
| C. H. Clock, Redlands | J. L. McClellan, Corona |
| M. H. Butcher, Santa Paula | Wyckoff Hoxie, Tustin |
| R. H. Shoemaker, Lindsay | E. T. Wall, Riverside |
| W. E. Spencer, Whittier | J. S. Arena, Los Angeles |

(c) Membership of Distribution Committee. The members and alternates of the Distribution Committee shall be as follows:

| Members | |
|---------------------------|-----------------------------|
| T. H. Powell, Los Angeles | J. A. Steward, Redlands |
| H. B. Harlow, Upland | J. H. Strait, Redlands |
| M. D. Anderson, Redlands | Charles Latimer, Ontario |
| R. E. Stark, Lindsay | Charles Hunt, East Highland |

| Alternates | |
|-----------------------------|--------------------------|
| L. H. Wohlwend, Los Angeles | Fred G. Kline, Redlands |
| A. H. Kirchmann, Fullerton | John H. Lytle, R3 |
| F. W. Evans, Santa Paula | P. H. Young, Los Angeles |
| P. H. Brecht, Azusa | Fred Hill, Redlands |

NOTE: Membership given as of June 1, 1938.

(d) Successor members. Upon vacancies occurring, through the resignation, death, removal, or otherwise, of a member or alternate, the successor to any member or alternate of the committees above-named shall be selected by the Secretary from the respective nominees of groups hereinafter designated to make nominations. Nominations shall be made in the following manner: The California Fruit Growers Exchange (a co-operative organized under the laws of the State of California, with its principal place of business in the city of Los Angeles) may nominate three (3) persons as the successor to fill the vacancy in the office of any one of the four (4) members or four (4) alternates first above-named or their successors; the Mutual Orange Distributors (a cooperative organized under the laws of the State of California, with its principal place of business in the city of Redlands, county of San Bernardino) may nominate three (3) persons as the successor to fill the vacancy in the office of any one of the two (2) members or two (2) alternates fifth and sixth above-named or their successors; all other shippers not affiliated with either of the above organizations may, by majority vote (based on tonnage shipped during the previous fiscal year), nominate three (3) persons as the successor to fill the vacancy in the office of any one of the two (2) members or two (2) alternates seventh and eighth above-named or their successors. Nominees submitted for vacancies in the office of

members or alternates of the Growers Advisory Committee shall be growers of fruit. No person shall serve at the same time as member of both the Growers Advisory Committee and the Distribution Committee. If any of the groups above-designated to make nominations fail to submit nominees in the number above-specified within fifteen (15) days after such vacancy occurs, the Secretary may select the member or alternate without nominations.

Any alternate selected from nominees of any group may serve on his committee only in the absence of any one of the regular members selected from nominees of the same group.

The Secretary may, at any time, remove from office any member or alternate of either of said committees.

(e) Powers and duties. (1) The Growers Advisory Committee shall, in addition to the power to administer the terms and provisions of this part as herein specifically provided, have power (i) to make, only to the extent specifically permitted by the provisions hereinafter contained, administrative rules and regulations; (ii) to receive, investigate, and report to the Secretary complaints of violations of this order; and (iii) to recommend to the Secretary amendments to this part.

(2) It shall be the duty of the Growers Advisory Committee and the Distribution Committee to keep minutes, books, and records which will clearly reflect all of their acts and transactions, and such minutes, books, and records shall at all times be subject to the examination of the Secretary.

(3) It shall also be the duty of the Growers Advisory Committee (i) to act as intermediary between the Secretary and the shippers; (ii) to furnish the Secretary such information as he may request; (iii) to appoint such employees as it may deem necessary, and to determine the salaries and define the duties of any such employees; and (iv) to appoint a Grapefruit Committee for advisory purposes.

(f) Voting procedure. For any decision of the Growers Advisory Committee or of the Distribution Committee to be valid, six (6) concurring votes shall be necessary. Each member, or alternate then serving in the place and stead of any member of his committee, must vote in person.

In the event the Distribution Committee fails to make a decision by six (6) concurring votes in the performance of any of its powers or duties under this part, the Growers Advisory Committee shall perform such duty or exercise such power.

The members (and alternates, when acting in the place and stead of members, as provided by this part) of the committees and subcommittees functioning under the provisions of this part shall serve without compensation, but shall be reimbursed for expenses necessarily incurred by them in the performance of their duties.

The agency shall give to the Secretary or his designated agent and representatives the same notice of meetings of the agency as is given to members of the agency.*† [Art. II, secs. 1-4]

902.4 Expenses and assessments. The Growers Advisory Committee is authorized to incur such expenses as the Secretary finds may be necessary to carry out the functions of the committees under

*†For statutory and source citations, see note to § 902.1.

this part. The funds to cover such expenses shall be acquired by the levying of assessments as hereinafter provided.

Every shipper's share of such expenses shall be that proportion thereof which, during any fiscal year, the total number of carloads or their equivalent in packed boxes allotted to such shipper plus any carloads or their equivalent in packed boxes shipped by such shipper during any period when allotments have not been fixed by the Secretary during any fiscal year, is of the total carloads or their equivalent in packed boxes during said year allotted to all shippers plus the carloads or their equivalent shipped by all shippers during any period when allotments have not been fixed by the Secretary. The Growers Advisory Committee may require that every shipper pay his assessments in advance of the actual fixing of allotments by the Secretary by levying the assessment, at the rates provided by this section, on allotments which it is estimated would be fixed for every such shipper during the shipping season for any variety of fruit, based upon the current estimates of every such shipper filed with the said committee as the same may be revised by the said committee. In the event assessments are levied in advance of the fixing of allotments, as hereinabove described, such assessments shall be adjusted at the end of the shipping season for such variety of fruit so that the assessments shall be based upon actual allotments fixed for every such shipper for the particular variety of fruit plus the quantity of such variety of fruit shipped during a period of time when allotments have not been fixed by the Secretary. The assessments of each shipper for any fiscal year shall be due at such time and shall be payable in such installments, if any, as the Growers Advisory Committee shall determine.

During the fiscal year ending October 31, 1936, every shipper shall pay, in the manner and at the time provided for in this section, two dollars (\$2.00) per carload, or its equivalent in packed boxes, on all carloads or their equivalent in packed boxes allotted to every such shipper plus all carloads or their equivalent in packed boxes shipped by every such shipper during any period of time when allotments have not been fixed by the Secretary: Provided, however, That if the Secretary shall find, at any time during the said fiscal year ending October 31, 1936, that the rate of assessment fixed by this section will result in the collection of a sum greater or smaller than the expenses that will necessarily be incurred by the committees administering this part, he shall decrease or increase such rate of assessment for the balance of the said fiscal year so that the funds received from the collection of such assessments will more nearly equal such expenses.

Subsequent to the fiscal year ending October 31, 1936, every shipper shall pay such sum per carload, or its equivalent in packed boxes, as shall be determined by the Growers Advisory Committee with the approval of the Secretary.

At the end of each fiscal year (including the fiscal year ending October 31, 1936), the Growers Advisory Committee shall refund to each contributing shipper, at the option of such shipper, the excess

of the amount paid by such shipper above his pro rata share of the expenses, or debit each shipper with the difference between his pro rata share and the amount paid by any such shipper, if such amount is less than his pro rata share. Any such debit shall become due and payable upon demand of the Growers Advisory Committee.*† [Art. II, sec. 5]

902.5 Limitation and proration—(a) Limitation of shipment. The Distribution Committee shall find and determine for each week the quantity of weekly shipments of each variety of fruit deemed by it advisable to be shipped and to be prorated in view of the prospective effective demand in the market areas. In making such determination, the committee shall give due consideration to the following factors: (1) Current market prices, (2) fruit on hand in the market areas as evidenced by supplies en route and on track at the principal markets, (3) available supply of fruit in the producing area, (4) supplies from competitive areas producing citrus fruit and other competitive fruit, and (5) trend in consumer income. The Distribution Committee shall promptly report the finding and determination so made to the Growers Advisory Committee, which committee shall, in turn, submit the same to the Secretary.

In determining the quantity of the weekly shipments deemed advisable to be shipped, the Distribution Committee may find and determine that the market shall be divided into two areas, one area to include such parts of California, Arizona, and Nevada as the said committee may determine are in such proximity to the areas of production as to require special treatment, and the other area to include the remainder of the Continental United States and Canada. In determining the quantity to be shipped within the nearby market area, the committee shall give consideration to such limitation of shipments as may be in effect within the States of Arizona or California pursuant to the laws of said States; and the weekly shipments permitted from Arizona to California and Nevada, and from California to Arizona and Nevada shall be such that the shippers of each State shall have an equitable share in the opportunity to market within such nearby market area. The Distribution Committee shall promptly report the finding and determination so made to the Growers Advisory Committee, which committee shall, in turn, submit the same to the Secretary.

(b) Prorate bases. (1) To obtain allotments and a prorate base for each variety of fruit, every shipper shall submit to the Growers Advisory Committee, at such time or times as shall be designated by said committee, upon forms to be prepared by said committee, written applications therefor, substantiated in such manner and by such evidence as may be prescribed in said application forms.

(2) Any grower producing fruit not controlled by a shipper (within the meaning of subparagraph (3) of this paragraph) may, likewise, make written applications to the Growers Advisory Committee for allotments and a prorate base for each variety of fruit. Said applications shall be on forms to be prepared by said committee and shall set forth the quantity of each variety of such grower's fruit which is not so controlled by any shipper, substantiated in

*†For statutory and source citations, see note to § 902.1.

such manner and by such evidence as may be prescribed in said application forms.

(3) Every shipper applying for allotments and a prorate base shall, from time to time, and as required by the Growers Advisory Committee, submit to said committee estimates of the fruit by varieties which he controls during the current shipping season by bona fide written agreements giving him authority to ship, or by having legal title, or by having paid therefor five (5) percent of the purchase price. Such estimates shall be submitted in such form and substantiated in such manner and by such evidence as may be prescribed by administrative rules and regulations made by the Growers Advisory Committee. The estimates shall be based on fruit eligible for sale during the current shipping season of each variety of fruit under the Federal laws and the laws of the States of California or Arizona applicable thereto and shall be expressed in terms of carloads or their equivalent in packed boxes.

(4) The Growers Advisory Committee shall check the accuracy of applications and estimates submitted under this section, and correct any errors, omissions, or inaccuracies found therein, by revising the same to conform to the check, and shall correct any other errors, omissions, or inaccuracies when ascertained by it. The Growers Advisory Committee may also determine that prorate bases be adjusted in such a manner as to eliminate the effect of any such errors, omissions, or inaccuracies upon the total amount of shipments allotted each shipper for the entire current shipping season of each variety of fruit. In the event any of the estimates upon which prorate bases have been established are revised because of changes in the ownership or control of the groves or crop included in such estimates, or in the event the estimate of the total crop is revised, the Growers Advisory Committee shall, from time to time, determine that any or all prorate bases shall be adjusted to conform to said revisions. To assist said committee in the performance of this duty, every shipper shall furnish to it such reports and further data as it may request, substantiated in such manner as said committee may prescribe.

(5) The prorate base for each shipper, and for each grower who applies for allotments and a prorate base, shall be the ratio which the quantity of each such shipper's or grower's variety of fruit, reported and revised as required by this paragraph, bears to the total crop of the same variety of fruit grown in the States of California and Arizona eligible for sale as defined in this paragraph and as determined from time to time by the Growers Advisory Committee, unless prorate districts have been established as hereinafter provided.

(6) The Growers Advisory Committee shall, in accordance with the method herein prescribed, determine prorate bases for each shipper and grower who applies for allotments and furnishes the required estimates and data. Separate prorate bases shall be established for each variety of fruit.

(7) The Growers Advisory Committee may, from time to time, find and determine that separate prorate districts be established,

and/or the individual prorate bases of any or all shippers or growers be adjusted because of differences in relative maturity throughout the season of any variety of fruit, or its relative length of mature life on the tree, or because of differences in the laws and regulations of the States of California and Arizona relating to the handling and marketing of fruit. Upon the establishment of such districts, the Growers Advisory Committee shall determine the respective portions deemed advisable by it to be shipped from each such prorate district out of the total weekly shipments which the Distribution Committee deemed advisable to be shipped from the States of California and Arizona. In determining the quantity of fruit to be allocated to each of such districts, and in the adjusting of the prorate bases of any and all shippers, consideration shall be given to the comparative marketing seasons and marketing practices of the several districts in past years (not exceeding ten years prior to the date of this part), the relative maturity throughout the current season of such variety of fruit grown in the different districts, available supplies of fruit in the respective districts, and the market opportunities for said variety of fruit throughout the season, so that every shipper (and grower receiving a prorate base) shall receive proportionate equality of opportunity to market.

(8) In the event separate prorate districts are established and the quantities of any variety of fruit to be shipped from each or any such prorate districts are determined, the Growers Advisory Committee shall find and determine a prorate base with respect to the fruit grown in each such district for each shipper and grower who applies for allotments pursuant to the provisions of this paragraph. Such prorate base shall be the ratio which the quantity of each such shipper's or grower's variety of fruit grown in a particular prorate district, reported and revised as required by this paragraph, bears to the total crop of the same variety of fruit grown in the same prorate district, as determined from time to time pursuant to this section.

(9) The Growers Advisory Committee shall make written reports to the Secretary of its findings and determinations with regard to the establishment of the prorate bases, any changes or revisions thereof, and findings and determinations made by it pursuant to the provisions of this paragraph.

(c) **Allotments.** (1) Upon receipt of the reports from the Growers Advisory Committee showing the prorate bases determined by it, and/or findings and determinations made by it pursuant to § 902.5(b)(7), the Secretary shall cause the same to be examined and, if approved by him, he shall record such approval and the report so approved shall thereupon become the basis for allotting in the manner hereinafter specified the weekly shipments among the applicants, and the separate prorate districts, if any, so established shall be deemed duly constituted.

(2) Upon receipt of the Growers Advisory Committee's report of the quantity of each variety of fruit deemed advisable to be shipped for any week, and the portions thereof deemed advisable to be shipped from the several districts if the total amount to be shipped

shall be so divided, the Secretary shall cause the same to be examined and, if approved by him, he shall record such approval, and the report so approved shall thereupon become the basis for the weekly limitation of shipments.

(3) Thereupon the Secretary shall fix the weekly allotment for each shipper, or grower who has applied for allotments, by signing, in addition to his approvals of the determination of the weekly shipments and of the prorate bases, a direction that the weekly allotments for every applicant shall be the product of each applicant's prorate base and the total shipments for said week if no prorate districts have been established, or the product of each applicant's district prorate base and the total shipments allocated to such prorate district if prorate districts have been established as provided herein. If the Distribution Committee should allocate the total weekly quantity of any variety of fruit to be shipped as between market areas, as set forth by paragraph (a) of this section, the weekly allotment of every applicant for each such market area shall be the product of each applicant's prorate base and the total shipments allocated to each such market area.

(4) Whenever the Secretary has fixed a weekly allotment for every shipper, or grower applying for allotments, as above provided, the Growers Advisory Committee shall calculate the amount thereof in terms of carloads, or their equivalent in packed boxes. A certificate shall then be issued by the Growers Advisory Committee which shall show the current allotment fixed for the applicant by the Secretary; shall set forth that such allotment is subject to adjustment with respect to (i) duly recorded exchanges of allotments with other shippers, (ii) over and undershipments made as permitted by subparagraph (6) of this paragraph, and (iii) transfers of allotments resulting from the provisions of this paragraph; and shall state that such allotment so adjusted represents the net quantity of fruit which may be shipped by such shipper or grower during the weekly proration period. Such certificate shall be mailed or otherwise sent to shippers and growers for whom allotments have been fixed, and the delivery of such certificate to such shipper or grower or the depositing thereof, enclosed in a stamped envelope addressed to the last known address of the applicant, in an United States mail box shall constitute notice of the fixing of the allotment by the Secretary and the contents of the certificates. Actual knowledge by any shipper or grower, no matter how obtained, of the fixing of his allotment and the net quantity of fruit allotted to him shall be sufficient notice thereof.

(5) During any week for which the Secretary fixes allotments for shipment of any variety of fruit to any market area, no shipper shall ship any such fruit for immediate or ultimate destination in such market area in excess of the quantity of such fruit then covered by the allotment for said week fixed for him, as increased or decreased, in accordance with the provisions of this part, by (i) duly recorded exchanges of allotments with other shippers, (ii) transfers of allotments from growers or shippers, (iii) reported and permitted over or undershipments made pursuant to this paragraph.

(6) During any week in which the Secretary fixes allotments as herein provided, every shipper, for the purpose of providing flexibility in the preparation of fruit for market, may ship, during any prorate period when not required to reduce shipments as provided in the following sentence, in addition to his allotment, an amount not to exceed ten (10) percent of his allotment, or one (1) carload if ten (10) percent of his allotment is less than one carload: Provided, That no shipper shall, during any prorate period, ship, by reason of the tolerance allowed by this subparagraph, more than twenty (20) percent of the total fruit under his control. The quantity of fruit shipped in excess of the allotment, and not exceeding the quantity permitted by the foregoing sentence, shall be offset by a reduction of an equal amount from his allotment for the next week in which proration is in effect, or if such weekly allotment be less than such permitted excess shipment, then such permitted excess shipment shall be deducted from succeeding weekly allotments until such excess shipment has been entirely offset. Any shipper shipping a quantity of fruit in excess of the allotment fixed for him by the Secretary and the quantity represented by exchanges or transfers of allotments shall report such overshipment to the Growers Advisory Committee within twenty-four (24) hours from the date thereof. If a shipper ships a quantity of fruit less than his allotment during any week, such shipper may ship, during the next week only in which such shipper is given an allotment, in addition to such allotment, a quantity equal to the undershipment: Provided, That the shipper report the undershipment to the agency within one (1) business day subsequent to the close of the weekly period when the undershipment occurred.

(7) Shippers may exchange allotments for fruit of the same variety in the same or different prorate districts if prorate districts are established pursuant to this section: Provided, That the Growers Advisory Committee may, when deemed advisable and subject to the approval of the Secretary, restrict the exchange of allotments to the exchange of allotments for fruit grown in a prorate district for allotments of fruit grown within the same district, and Provided, further, That the shipper acquiring an allotment by exchange agree to return an allotment at a later period during the same shipping season in the same quantity and covering the same variety of fruit to the shipper lending it and the shipper acquiring same have sufficient fruit under his control (within the meaning of § 902.5 (b) (3)) to enable him to return an allotment for the same quantity of the same variety of fruit during the same shipping season. No shipper who has an allotment to exchange shall make an exchange of his allotment with another shipper where such shipper who has the allotment for exchange does not need the return of such allotment to complete his shipments for the shipping season of the variety of fruit then under the control of such shipper: Provided, That both shippers making an exchange of an allotment shall report the same to the Growers Advisory Committee at such time and in such manner as said committee may determine.

(8) When control of fruit (within the meaning of § 902.5 (b) (3)) in an amount not exceeding the quantity represented by the current weekly allotment is transferred from a shipper, or a grower who has obtained an allotment, to another shipper, any allotment or part thereof covering such fruit so transferred shall be thereby transferred to the shipper acquiring such fruit: Provided, That the shipper transferring the fruit shall, within twenty-four (24) hours after such transfer, notify the Growers Advisory Committee of such transfer. If any shipper obtain control of a grower's or another shipper's fruit, in excess of the quantity represented by the weekly allotment fixed for such grower or shipper, such fact shall, within twenty-four (24) hours, be reported to the Growers Advisory Committee by both the transferor and transferee so that a revision of such transferor's and transferee's prorate bases may be made as provided in paragraph (c) (4) of this section.

(9) No shipper shall ship fruit by virtue of an allotment originally made to any grower or shipper more than (2) weeks before the date of shipment.

(10) During the total of all weeks in any one shipping season for which limitation and proration is in effect on any variety of fruit, no shipper shall ship any such fruit in excess of the quantity of the fruit covered by total allotments fixed by the Secretary for such shipper for all of said weeks and as said quantity is increased or decreased by duly-recorded transfers of allotments from growers or other shippers.

(11) The provisions of this part with respect to the limitation and proration of shipments and to assessments shall not apply to fruit shipped for immediate conversion into manufactured products or shipped for charitable purposes: Provided, That permission in writing to ship the same for said purposes during any week for which limitation and proration of shipments may be in effect be first obtained by the shipper from the Growers Advisory Committee, and the Growers Advisory Committee shall give such permission, upon application by the shipper therefor, if the Growers Advisory Committee finds as a fact that such fruit to be so shipped is not likely to enter commercial fresh fruit channels.

(12) Upon application by any central marketing organization with which any shippers who are parties to the marketing agreement are affiliated, the Growers Advisory Committee, in accordance with the provisions of subsection (f) of section 3 of article III of the marketing agreement, shall allocate to such central marketing organization the aggregate of the respective allotments of the said shippers made pursuant to this part: Provided, That for the entire shipping season such central marketing organization shall ship for each such shipper an equitable share of the aggregate allotment received by such central marketing organization.

(d) **Distribution of benefits.** Each shipper shall, insofar as practical operations permit, divide his total allotments for each variety of fruit equitably among the growers whose fruit of the same variety, during the whole or part of the shipping season, is controlled, as set forth in § 902.5 (b) (3), by such shipper.

(e) Exchange for State allotments. An exchange between shippers of allotments or any part thereof under this part for an equivalent quantity of fruit of the same variety under an allotment for the same weekly period fixed pursuant to a corresponding order, license or other regulation of the duly constituted authorities, pursuant to the provisions of the California Agricultural Adjustment Act of 1935 and amendments thereto, is hereby authorized, subject to such administrative rules and regulations as the Growers Advisory Committee may make to govern the procedure to be followed in connection with such exchange: Provided, however, That the Growers Advisory Committee may, when deemed advisable and subject to the approval of the Secretary, restrict the exchange of allotments, as provided in this section, to the exchange of allotments for fruit grown in a prorate district for allotments of fruit grown within the same district.* [Art. III, Order 2, Jan. 4, 1936, as amended June 5, 1936]

902.6 Approval and review by the Secretary. All actions and determinations of the Growers Advisory Committee and the Distribution Committee shall be subject to approval and review as to the facts and the law by the Secretary.*† [Art. IV]

902.7 Effective time and termination. This part shall become effective at such time as the Secretary may declare, and shall continue in force until terminated in one of the ways hereinafter specified.

The Secretary may at any time terminate this part by giving at least one (1) day's notice by means of a press release or in any other manner which the Secretary may determine.

The Secretary shall terminate or suspend the operation of this part, or of any provision thereof, whenever he finds that said part, or such provision thereof, obstructs or does not tend to effectuate the declared policy of the Act.

The Secretary shall terminate this part on October 31st of any year whenever he finds that such termination is favored by a majority of the growers who, during the preceding shipping year, have been engaged in the production for market of fruit in the States of California and Arizona: Provided, That such majority have during such period produced for market more than fifty (50) percent of the volume of such fruit produced for market within said States, but such termination shall be effective only if announced on or before October 20th of such year.*† [Art. V, secs. 1, 2]

902.8 Proceedings after termination. Upon the termination of this part, the members of the Growers Advisory Committee then functioning shall continue to function for the purpose of conserving the funds and property then in the possession or under the control of the Growers Advisory Committee, of collecting claims for any funds unpaid or property of the committee withheld from it at the time of such termination, and of distributing all such funds and property. The members of the said committee (a) shall continue in such capacity until discharged by the Secretary; (b) shall from time to time account for all receipts and disbursements and/or deliver all funds and property on hand, together with all books

*†For statutory and source citations, see note to § 902.1.

and records of the agency and books and records kept by them subsequent to the termination of this part, pursuant to the provisions of §§ 902.7, 902.8, to such person as the Secretary shall direct; and (c) shall, upon the request of the Secretary, execute such assignments or other instruments as may be necessary or appropriate to vest in such person full title to all of the funds and/or claims vested in the Growers Advisory Committee and the committee functioning after the termination of this part. Out of the funds remaining in excess of the expenditures and over and above the amount of money necessary to meet outstanding obligations incurred before and after the termination of this part, the members of the Growers Advisory Committee, functioning as aforesaid, shall refund to each contributor the amount by which payments made by such contributor exceed his pro rata share of the expenses.

Any person to whom funds, property, and/or claims have been delivered by the Growers Advisory Committee or its members upon direction of the Secretary as herein provided shall be subject to the same obligations and duties with respect to said funds, property and/or claims as are hereinabove imposed upon the members of said committee.*† [Art. V, sec. 3]

902.9 Duration of immunities. The benefits, privileges, and immunities conferred by virtue of this part shall cease upon its termination, except with respect to acts done under and during the existence of this part, and benefits, privileges, and immunities conferred by this part upon any person shall cease upon its termination as to such person, except with respect to acts done under and during the existence of this part.*† [Art. VI]

902.10 Agents. The Secretary may, by designation in writing, name any person, including any officer or employee of the Government, or any bureau or division in the Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this part.*† [Art. VII]

902.11 Derogation. Nothing contained in this part is or shall be construed to be in derogation or in modification of the rights of the Secretary or of the United States (a) to exercise any power granted by the Act or otherwise, and/or (b) in accordance with such power to act in the premises whenever such action is deemed advisable.*† [Art. VIII]

902.12 Liability of agency members. No member of the agency nor any employee thereof shall be held responsible individually, in any way whatsoever, to any shipper or any other person for errors in judgment, mistakes, or other acts of commission or omission as such member or employee except for acts of dishonesty.*† [Art. IX]

902.13 Separability. If any provision of this part is declared invalid or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this part and/or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.*† [Art. X]

902.14 Effect of order upon prior actions. Nothing in this part contained shall be deemed to invalidate any action taken or

determination made heretofore pursuant to the provisions of the marketing agreement and the license, as amended, for shippers of oranges and grapefruit grown in the States of California and Arizona, which was issued by the Secretary on December 14, 1933, nor to relieve any person of any obligation incurred pursuant thereto, nor to divest any person of any rights vested in such person by virtue thereof.*† [Art. XI]

PART 903—MILK IN ST. LOUIS, MISSOURI, MARKETING AREA

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|---|---|
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| 903.6 Reports of handlers. | 903.14 Separability. |
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Section 903.1 Excerpt from findings. The Secretary, acting under the authority vested in him by section 8c of the Agricultural Adjustment Act (49 Stat. 753, 50 Stat. 246; 7 U.S.C., Sup., 608c), orders that the handling of milk in the St. Louis, Missouri, marketing area, in the current of interstate or foreign commerce, or so as directly to burden, obstruct, or affect interstate or foreign commerce in such commodity, from and after February 1, 1936, shall be in conformity to and in compliance with the terms and conditions of this part.*†† [Excerpt from findings]

*§§ 903.1 to 903.21, inclusive, issued under the authority contained in sec. 8c, 49 Stat. 753, 50 Stat. 246; 7 U.S.C., Sup., 608c.

††The source of §§ 903.1 to 903.21, inclusive, (except for the amendment noted in the text,) is Order 3, Department of Agriculture, Jan. 30, 1936, effective Feb. 1, 1936. (Order Ser., AAA)

903.2 Definitions. The following terms shall have the following meanings:

(a) "Act" means the Agricultural Adjustment Act, approved May 12, 1933 (48 Stat. 31; 7 U.S.C. Chapter 26), as amended.

(b) "Secretary" means the Secretary of Agriculture of the United States.

(c) "St. Louis marketing area", hereinafter called the "marketing area", means the territory within the corporate limits of the cities of St. Louis, Kirkwood, and Valley Park, Missouri, and the territory within St. Ferdinand, Normandy, Clayton, Jefferson and Carondelet townships in St. Louis County, Missouri; Chouteau, Venice, Nameoki and Granite City townships in Madison County, Illinois; and Stites, Canteen, Caseyville, East St. Louis, Centerville, Belleville, St. Clair, Sugar Loaf and Stookey townships in St. Clair County, Illinois.

(d) "Person" means any individual, partnership, corporation, association, and any other business unit.

(e) "Producer" means any person, irrespective of whether any such person is also a handler, who produces milk in conformity with, or subject to, the health requirements applicable for milk to be sold for consumption as milk in the marketing area.

(f) "Handler" means any person, irrespective of whether such person is a producer or an association of producers, wherever located or operating, who engages in such handling of milk, which is sold as milk or cream in the marketing area, as is in the current of interstate or foreign commerce, or which directly burdens, obstructs, or affects, interstate or foreign commerce in milk and its products.

(g) "Market Administrator" means the person designated pursuant to § 903.3, as the agency for the administration hereof.

(h) "Delivery period" means the current marketing period from the first to the last day of each month, both inclusive.* [Art. I, order 3, Jan. 30, 1936, as amended Apr. 13, 1936, and Mar. 29, 1937]

903.3 Market Administrator—(a) Selection, removal, and bond. The Market Administrator shall be selected, and shall be subject to removal at any time, by the Secretary. Within forty-five (45) days following the date upon which he enters upon his duties, the Market Administrator shall execute and deliver to the Secretary a bond, conditioned upon the faithful performance of his duties, in an amount and with surety thereon satisfactory to the Secretary.

(b) Compensation. The Market Administrator shall be entitled to such reasonable compensation as may be determined by the Secretary.

(c) Powers and duties. The Market Administrator shall have power: To administer the terms and provisions hereof; and to receive, investigate, and report to the Secretary complaints of violations of the terms and provisions hereof; and

The Market Administrator, in addition to the duties hereinafter described, shall: (1) Keep such books and records as will clearly reflect the transactions provided for herein; (2) submit his books and records to examination by the Secretary at any and all times; (3) furnish such information and such verified reports as the Secretary may

request; (4) obtain a bond with reasonable surety thereon covering each employee who handles funds entrusted to the Market Administrator; (5) employ and fix the compensation of such persons as may be necessary to enable him to administer the terms and provisions hereof; (6) furnish to the Market Advisory Committee, when the same has been duly constituted, factual information in the form of general statements; Provided, That such statements shall not identify the information furnished to the Market Administrator by any person; (7) publicly disclose to handlers and producers, unless otherwise directed by the Secretary, the name of any handler who, within fifteen (15) days after the date upon which he is required to perform such acts, has not (i) made reports pursuant to § 903.6, and (ii) made payments pursuant to § 903.10; (8) and pay, out of the funds provided by § 903.11, the cost of his bond and of the bonds of such of his employees, as handle funds entrusted to the Market Administrator, his own compensation, and all other expenses which will necessarily be incurred for the maintenance and functioning of his office and the performance of his duties.

(d) Responsibility. The Market Administrator, in his capacity as such, shall not be held responsible in any way whatsoever to any handler or to any other person, for errors in judgment, for mistakes, or for other acts either of commission or omission, except for his own wilful misfeasance, malfeasance or dishonesty.*† [Art. II]

903.4 Classification of milk—(a) Sales and use classification. Milk purchased or handled by handlers shall be classified as follows:

(1) Class I milk means all milk sold by handlers as milk containing not less than one-half of one percent of butterfat.

(2) Class II milk means the quantity of milk purchased, sold or used by handlers in excess of class I milk.

(b) Interhandler sales. Milk sold as milk or cream by handler to another handler shall be presumed to be class I milk; Provided, That if such selling handler, on or before the date fixed for filing reports pursuant to § 903.6, shall furnish proof satisfactory to the Market Administrator that such milk has been sold or used by the purchasing handler other than as class I milk, then, and in that event, such milk shall be classified as class II milk.

(c) Source of class I milk. The milk which was sold or distributed by each handler as class I milk shall be presumed to have been that milk which was delivered to such handler at plants within and nearest to the marketing area.*† [Art. III]

903.5 Minimum prices—(a) Class I prices. Each handler shall pay producers, in the manner set forth in § 903.10, for class I milk, not less than the following prices:

(1) In the case of milk delivered to such handler's plant located in the marketing area, \$2.10 per hundredweight;

(2) In the case of milk delivered by producers to such handler's plant outside the marketing area, \$2.10 per hundredweight less the amount specified for the airline distance of such plant from the City Hall in St. Louis, as follows: Within twenty (20) miles, sixteen (16) cents; more than twenty (20) miles but not in excess of thirty (30)

*For statutory and source citations, see note to § 903.1.

miles, an additional two (2) cents; more than thirty (30) miles but not in excess of forty (40) miles, an additional two (2) cents; and for each additional ten (10) miles, in excess of forty (40) miles, an additional one (1) cent.

(b) **Class II prices.** Each handler shall pay producers, in the manner set forth in § 903.10 for class II milk, not less than the following prices:

(1) In the case of milk delivered to such handler's plant located in the marketing area, a price per hundredweight which shall be calculated by the Market Administrator as follows: Multiply by 3.5, the average price per pound of 92-score butter at wholesale in the Chicago market, as reported by the United States Department of Agriculture for the delivery period during which such milk is purchased, add 30 percent thereof and add 15 cents;

(2) In the case of milk delivered to such handler's plant, located outside the marketing area, the price calculated by the Market Administrator pursuant to subparagraph (1) of this paragraph less 15 cents; and

(3) In the case of milk used by such handler for evaporated milk in hermetically sealed containers, the price set forth in the Marketing Agreement and License for Evaporated Milk, issued by the Secretary May 31, 1935.

(c) **Sales outside the marketing area.** With respect to class I milk sold outside the marketing area by a handler, the price to be paid to producers, in lieu of the price set forth in § 903.5 (a), shall be such price as the Market Administrator ascertains to be the prevailing price paid by handlers, in the market where such milk is sold, for milk of the equivalent use, subject to a reasonable adjustment on account of transportation from the plant where such milk is received from producers to the plant where such milk is loaded for delivery on wholesale and retail routes.

(d) **Publication of class II price.** On or before the second day after the end of each delivery period, the Market Administrator shall publicly announce the class II price in effect for such delivery period.*† [Art. IV]

903.6 Reports of handlers—(a) Periodic reports. On or before the fifth day after the end of each delivery period, each handler shall, with respect to milk or cream handled by him during such delivery period, report to the Market Administrator, in the detail and form prescribed by him, as follows:

- (1) The receipts at each plant from producers who are not handlers;
- (2) The receipts at each plant from any other handler, including any handler who is also a producer;
- (3) The quantity, if any, produced by the handler; and
- (4) The respective quantities of milk which were sold or used, including sales to other handlers, for the purpose of classification pursuant to § 903.4.

(b) **Reports as to producers.** Each handler shall report to the Market Administrator:

- (1) Within ten (10) days after the Market Administrator's request, with respect to any producer for whom such information is not in the

files of the Market Administrator and with respect to a period or periods of time designated by the Market Administrator the name and address, the total pounds of milk delivered, the average butterfat test of milk delivered and the number of days on which deliveries were made.

(2) As soon as possible after first receiving milk from any producer, the name and address of such producer and the date on which such milk was first received.

(c) Report of payment to producers. Each handler shall submit to the Market Administrator, within twenty (20) days after the end of each delivery period, his producer payroll, or a report, which shall show, for such delivery period and for each and every producer, (1) his total delivery of milk with the average butterfat test thereof and (2) the net amount of the payment made to him with the prices, deductions and charges involved.

(d) Verification of reports. In order that the Market Administrator may submit verified reports to the Secretary pursuant to § 903.3 (c) each handler shall permit the Market Administrator or his representative, during the usual hours of business, to verify the information contained in reports submitted by such handler pursuant to this section and to § 903.7, and weigh, sample and test milk for butterfat.*† [Art. V]

903.7 Handlers not handling class I milk. Application of provisions. Any handler who does not handle class I milk and who does not receive milk from producers shall, on or before the eighth day after the end of each delivery period, report to the Market Administrator the total quantity of cream and other milk products sold to each handler in the marketing area during such delivery period.*† [Art. VI]

903.8 Handlers who are also producers. Milk purchased from producers. In the case of a handler who is also a producer and has purchased milk from producers, the Market Administrator shall, in the computations set forth in § 903.9, first exclude the milk purchased by him in each class from other handlers and then apportion the milk purchased by him from producers to each class according to the ratio which such handler's remaining total sales in each class bears to his remaining total sales in all classes.*† [Art. VII]

903.9 Determination of uniform prices to producers—(a) Computation of value of milk for each handler. For each delivery period, the market administrator shall compute, subject to the provisions of § 903.8, the value of milk sold or used by each handler, which was not purchased from other handlers, by multiplying the quantity of such milk in each class by the price applicable pursuant to § 903.5 and adding together the resulting value of each class.

(b) Computation and announcement of uniform price for each handler. The Market Administrator shall compute and announce for each handler the uniform price per hundredweight of milk delivered to him by producers during each delivery period as follows:

(1) Add to the value computed pursuant to paragraph (a) the amount of adjustment to be made pursuant to § 903.10 (d);

*†For statutory and source citations, see note to § 903.1.

(2) Subtract the total amount to be paid pursuant to § 903.10 (a) (2);

(3) Divide by the total quantity of milk delivered by producers other than the milk represented by the amount subtracted in subparagraph (2) of this paragraph;

(4) On or before the 10th day after the end of each delivery period, notify each handler of the uniform price computed for him; and

(5) On or after the 15th day after the end of each delivery period, publicly announce the uniform price computed for each handler pursuant to this section with the differentials applicable pursuant to § 903.10 (d).*† [Art. VIII]

903.10 Payments for milk—(a) Time and method of payment.

On or before the 15th day after the end of each delivery period, each handler shall make payment, subject to the butterfat differential set forth in paragraph (c), for the total value of milk received from producers during such delivery period as follows:

(1) To producers, except as set forth in subparagraph (2) of this paragraph, at the uniform price per hundredweight computed for such handler pursuant to § 903.9 (b), subject to the country station differentials set forth in paragraph (d);

(2) To any producer, who did not regularly sell milk during a period of 30 days next preceding the effective date hereof to a handler or to persons within the marketing area, for all the milk delivered by such producer during the period beginning with the first regular delivery by such producer and continuing until the end of two full calendar months following the first day of the next succeeding calendar month, at the class II price in effect at such handler's plant where such producer delivered milk.

(b) **Errors in payments.** Errors in making the payments prescribed in this section shall be corrected not later than the date for making payments next following the determination of such errors.

(c) **Butterfat differential.** In making payments to each producer pursuant to this section, each handler shall add or subtract as the case may be, three (3) cents per hundredweight for each one-tenth of one percent butterfat content of the milk delivered by such producer which is above or below 3.5 percent.

(d) **Country station differentials.** In making payments pursuant to subparagraph (1) of paragraph (a) of this section for milk received from producers at plants located outside the marketing area, if any, each handler shall deduct the amount per hundredweight specified for the air-line distance of any such plant from the city hall in St. Louis as follows: within twenty (20) miles, sixteen (16) cents; more than twenty (20) miles but not in excess of thirty (30) miles, an additional two (2) cents; more than thirty (30) miles but not in excess of forty (40) miles, an additional two (2) cents; and for each additional ten (10) miles in excess of forty (40) miles, an additional one (1) cent.

(e) **Additional payments.** Any handler may make payments to producers in addition to the payments to be made pursuant to paragraph (a) of this section; Provided, That such additional payments shall be uniform as among all producers similarly circumstanced.

Each handler shall pay to any producers cooperative association, which the Secretary determines to be qualified under the Act of Congress of February 18, 1922 (42 Stat. 388; 7 U.S.C. 291–292), as amended, known as the “Capper-Volstead Act”, and to be rendering service to such handler, a sum not exceeding four (4) cents per hundredweight of milk delivered by the members of such association as a payment for the service of such association to such handler.*† [Art. IX]

903.11 Expense of administration—(a) Payments by handlers. As his pro rata share of the expense of the administration hereof, each handler shall, on or before the 15th day after the end of each delivery period, pay to the Market Administrator, with respect to all milk delivered to him by producers or an association of producers or produced by him during such delivery period, a sum not exceeding one (1) cent per hundredweight, the exact sum to be determined by the Market Administrator subject to review by the Secretary. Each handler, who is a cooperative association of producers, shall pay such pro rata share of expense only on that milk received from producers at any plant of such association.

(b) Suits by Market Administrator. The Market Administrator may maintain a suit in his own name against any handler for the collection of such handler's pro rata share of expense set forth in this section.*† [Art. X]

903.12 Unfair methods of competition. Each handler shall refrain from acts which constitute unfair methods of competition by way of indulging in any practices with respect to the transportation of milk for, and the supplying of goods or services to, producers from whom milk is purchased, which tend to defeat the purpose and intent of this part.*† [Art. XI]

903.13 Market Advisory Committee—(a) Representation, selection, approval, and removal. Subsequent to the effective date of this part, representatives of producers, handlers and consumers, respectively, may certify to the Secretary the selection of three individuals by each such group for membership on the market advisory committee. Upon approval of the Secretary, the nine individuals so selected shall constitute the Market Advisory Committee. Each member of the Market Advisory Committee shall serve for a term of one year unless sooner removed by the Secretary. After the market advisory committee has been constituted, vacancies in the membership thereof shall be filled in the same manner as the original selections were made.

(b) Powers. The Market Advisory Committee shall have the power to recommend to the Secretary amendments to this part originating within itself or submitted to it by interested parties, after a study of the facts available to the Market Advisory Committee.*† [Art. XII]

903.14 Separability. If any provision of this part is declared invalid or the applicability thereof to any person, circumstance or thing is held invalid, the validity of the remainder of this part

*†For statutory and source citations, see note to § 903.1.

and the applicability thereof to any other person, circumstance or thing shall not be affected thereby.*† [Art. XIII]

903.15 Derogation. Nothing contained in this part is or shall be construed to be in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the Act or otherwise, and in accordance with such powers to act in the premises whenever such action is deemed advisable.*† [Art. XIV]

903.16 Duration of immunities. The benefits, privileges and immunities conferred by virtue of this part shall cease upon its termination, except with respect to acts done under and during the existence of this part, and the benefits, privileges and immunities conferred by this part upon any handler shall cease upon its termination, except with respect to acts done under and during the existence of this part.*† [Art. XV]

903.17 Effective time, termination, and suspension. This part shall become effective at such time as the Secretary may declare above his signature attached hereto, and shall continue in force until terminated in one of the ways hereinafter specified.

The Secretary may at any time suspend this part, or any provision thereof, by giving at least 10 days' notice by means of a press release or in any other manner which the Secretary may determine.

The Secretary may at any time terminate this part, or any provision thereof, by giving at least 10 days' notice by means of a press release or in any other manner which the Secretary may determine.

The Secretary shall terminate this part at the end of any delivery period whenever he finds that such termination is favored by a majority of the producers of milk who during the preceding delivery period have been engaged in the production for market of milk in the marketing area; Provided, That such majority have during such period produced for market more than 50 percent of the volume of such milk produced for market within said marketing area.

This part shall in any event terminate whenever the provisions of the Act authorizing it cease to be in effect.*† [Art. XVI, secs. 1, 2, 3]

903.18 Effect. Unless otherwise provided by the Secretary in the notice of amendment, termination or suspension, of any or all provisions hereof, the amendment, termination or suspension shall not affect, waive or terminate any right, duty, obligation or liability which shall have arisen or may thereafter arise in connection with any provision of this part; release or waive any violation of this part occurring prior to the effective date of such amendment, termination or suspension; or affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violation.*† [Art. XVI, sec. 4]

903.19 Continuing power and duty. If, upon the termination or suspension of this part, there are any obligations arising hereunder, the final accrual or ascertainment of which requires further acts by any handler, or by the Market Administrator, or by any other person, the power and duty to perform such further acts shall continue notwithstanding such termination or suspension; Provided,

That any such acts required under the terms of this part to be performed by the Market Administrator shall, if the Secretary so directs, be performed by such other person, persons, or agency as the Secretary may designate.

The Market Administrator or such other person as the Secretary may designate shall continue in such capacity until discharged by the Secretary; from time to time account for all receipts and disbursements and deliver all funds or property on hand, together with the books and records of the Market Administrator or such person, to such person as the Secretary shall direct; and if so directed by the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title to all funds, property and claims vested in the Market Administrator or such person pursuant to this part.*† [Art. XVI, sec. 5]

903.20 Liquidation. Upon the termination or suspension of this part or of any provision thereof, the Market Administrator or such person as the Secretary may designate shall, if so directed by the Secretary, liquidate the business of the Market Administrator's office and dispose of all funds and property then in his possession or under his control, together with claims for any funds which are unpaid and owing at the time of such termination or suspension.

Any funds collected for expenses, pursuant to the provisions of this part, over and above the amounts necessary to meet outstanding obligations and the expenses necessarily incurred by the Market Administrator or such person in liquidating the business of the Market Administrator's office, shall be distributed by the Market Administrator or such person to the contributing handlers in an equitable manner.*† [Art. XVI, sec. 6]

903.21 Determination of emergency. The Secretary hereby determines that an emergency exists which requires a shorter period of notice than three days, and that the period of notice, with respect to the issuance of this part, which is hereinafter provided, is reasonable under the circumstances.*† [Art. XVI, sec. 7]

PART 904—MILK IN GREATER BOSTON, MASSACHUSETTS, MARKETING AREA

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| (b) Class I prices to producers. | |

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Section 904.1 Excerpt from findings. The Secretary of Agriculture, pursuant to the authority vested in him by section 8c of the Agricultural Adjustment Act (49 Stat. 753, 50 Stat. 246; 7 U.S.C., Sup., 608c), hereby orders that such handling of milk in the Greater Boston, Massachusetts, marketing area, as is in the current of interstate or foreign commerce, or which directly burdens, obstructs, or affects interstate or foreign commerce shall, from February 9, 1936, be in conformity to and in compliance with the following terms and conditions.*† [Excerpt from findings]

* §§ 904.1 to 904.19, inclusive, issued under the authority contained in sec. 8c, 49 Stat. 753, 50 Stat. 246; 7 U.S.C., Sup., 608c.

†The source of §§ 904.1 to 904.19, inclusive, (except for amendments noted in the text,) is Order 4, Department of Agriculture, Feb. 7, 1936, effective Feb. 9, 1936. (Order Ser., AAA)

904.2 Definitions. The following terms shall have the following meanings:

(a) "Act" means the Agricultural Marketing Agreement Act of 1937 (50 Stat. 246) which re-enacts and further amends Public, No. 10, 73d Congress (48 Stat. 31; 7 U.S.C. Chapter 26), as amended.

(b) "Secretary" means the Secretary of Agriculture of the United States.

(c) "Greater Boston, Massachusetts, marketing area", hereinafter called the "marketing area", means the territory included within the boundary lines of the cities and towns of Arlington, Belmont, Beverly, Boston, Braintree, Brookline, Cambridge, Chelsea, Dedham, Everett, Lexington, Lynn, Malden, Marblehead, Medford, Melrose, Milton, Nahant, Needham, Newton, Peabody, Quincy, Reading, Revere, Salem, Saugus, Somerville, Stoneham, Swampscott, Wakefield, Waltham, Watertown, Wellesley, Weymouth, Winchester, Winthrop and Woburn, Massachusetts.

(d) "Person" means any individual, partnership, corporation, association and any other business unit.

(e) "Producer" means any person who, in conformity with the health regulations which are applicable to milk which is sold for consumption as milk in the marketing area, produces milk and distributes or delivers to a handler milk of his own production.

(f) "Handler" means any person, irrespective of whether such person is a producer or an association of producers, wherever located or operating, who engages in such handling of milk, which is sold as milk or cream in the marketing area, as is in the current of interstate or foreign commerce or which directly burdens, obstructs or affects interstate or foreign commerce in milk and its products.

(g) "Market Administrator" means the person designated pursuant to § 904.3 as the agency for the administration hereof.

(h) "Delivery period" means the current marketing period from the first to, and including, the fifteenth day of each month, and from the sixteenth to, and including, the last day of each month.* [Art. I, Order 4, Feb. 7, 1936, as amended July 28, 1937]

904.3 Market Administrator—(a) Selection, removal, and bond. The Market Administrator shall be selected by the Secretary and shall be subject to removal by him at any time. The Market Administrator shall, within 45 days following the date upon which he enters upon his duties, execute and deliver to the Secretary a bond, conditioned upon the faithful performance of his duties, in an amount and with surety thereon satisfactory to the Secretary.

(b) Compensation. The Market Administrator shall be entitled to such reasonable compensation as may be determined by the Secretary.

(c) Powers and duties. The Market Administrator shall have power: To administer the terms and provisions hereof; to receive, investigate and report to the Secretary complaints of violations of the terms and provisions hereof. And the Market Administrator, in addition to the duties hereinafter described, shall: (1) Keep such books and records as will clearly reflect the transactions provided for herein; (2) submit his books and records to examination by the Secretary at any and all times; (3) furnish such information and such verified reports as the Secretary may request; (4) obtain a bond with reasonable security thereon covering each employee who handles funds entrusted to the Market Administrator; (5) publicly disclose to handlers and producers, unless otherwise directed by the Secretary, the name of any person, who within 15 days after the date upon which he is required to perform such acts, has not (i) made reports pursuant to § 904.6 or (ii) made payments pursuant to § 904.9; (6) employ and fix the compensation of such persons as may be necessary to enable him to administer the terms and provisions hereof; and (7) pay, out of the funds provided by § 904.11 the cost of his bond and of the bonds of such of his employees as handle funds entrusted to the Market Administrator, his own compensation and all other expenses which will necessarily be incurred by him for the maintenance and functioning of his office and the performance of his duties.

(d) Responsibility. The Market Administrator, in his capacity as such, shall not be held responsible in any way whatsoever to any handler, or to any other person, for errors in judgment, for mistakes or for other acts either of commission or omission, except for his own wilful misfeasance, malfeasance or dishonesty.* [Art. II, Order 4, Feb. 7, 1936, as amended July 28, 1937]

*For statutory citation, see note to § 904.1.

904.4 Classification of milk—(a) Sales and use classification. Milk purchased or handled by handlers shall be classified as follows:

(1) All milk sold or distributed as milk, chocolate milk, or flavored milk and all milk not specifically accounted for as class II milk shall be class I milk; and

(2) Milk specifically accounted for (i) as being sold, distributed, or disposed of other than as milk, chocolate milk, or flavored milk and (ii) as actual plant shrinkage within reasonable limits shall be class II milk.

(b) Interhandler or nonhandler sales. Milk, including skim milk, sold by a handler to another handler or to a person who is not a handler and who distributes milk or manufactures milk products shall be presumed to be class I milk. In the event that such selling handler, on or before the date fixed for filing reports pursuant to § 904.6, notifies the Market Administrator that such milk, or a part thereof, has been sold or used by such purchaser other than as class I milk, such milk, or part thereof, shall be classified as class II milk; Provided, That if such selling handler does not, on or before the fifteenth day after the end of the delivery period during which such sale was made, furnish proof satisfactory to the Market Administrator in support of the above notification, such milk or part thereof shall then be classified as class I milk and so included in the statement rendered to the selling handler pursuant to § 904.9 (a) (3).* [Art. III, Order 4, as amended July 28, 1937]

904.5 Minimum prices—(a) Class I prices to associations of producers. Each handler shall pay any association of producers for class I milk containing 3.7 percent butterfat not less than the following prices:

(1) \$3.31 per hundredweight for such milk delivered from the plant of such association to such handler's plant located not more than forty miles from the State House in Boston;

(2) \$3.26 per hundredweight for such milk delivered from the plant of such association to such handler at a railroad delivery point not more than 40 miles from the State House in Boston; and

(3) If such milk is delivered containing butterfat more or less than 3.7 percent such handler shall add or subtract, as the case may be, a differential for each one-tenth of 1 percent above or below 3.7 percent, which differential is the result of dividing by 330 the cream price used in § 904.5 (c) (1).

(b) Class I prices to producers. Each handler shall pay producers, in the manner set forth in § 904.9, for class I milk delivered by them, not less than the following prices:

(1) \$3.19 per hundredweight for such milk delivered from producers' farms to such handler's plant located not more than 40 miles from the State House in Boston;

(2) \$3.01 per hundredweight for such milk delivered from producers' farms to such handler's plant located more than 40 miles from the State House in Boston, less an amount per hundredweight equal to the freight from the railroad shipping point for such handler's plant to such handler's railroad delivery point in the marketing area. Such freight shall be calculated according to applicable

rail tariffs for the transportation in carload lots of milk in forty-quart cans and each such can shall be considered to contain 85 pounds of milk;

(3) For the purpose of this paragraph the milk which was sold or distributed during each delivery period, by each handler as class I milk shall be presumed to have been that milk which was received at such handler's plant located not more than 40 miles from the State House in Boston (i) directly from producers' farms and (ii) from the nearest plants located more than 40 miles from the State House in Boston.

(c) **Class II prices.** Each handler shall pay producers, in the manner set forth in § 904.9 for class II milk not less than the following prices per hundredweight:

(1) In the case of such milk delivered to a handler's plant located not more than 40 miles from the State House in Boston, a price which the Market Administrator shall calculate as follows: Divide by 33 the weighted average price per 40-quart can of bottling quality cream in the Boston market, as reported by the United States Department of Agriculture for the delivery period during which such milk is delivered, multiply the result by 3.7, add 2.125 times the average of the weekly quotations per pound of domestic, 20-30 mesh, casein in bags delivered in carload lots at New York, as published by the Oil, Paint and Drug Reporter during such delivery period, and subtract 42 cents; and

(2) In the case of such milk delivered to a handler's plant located more than 40 miles from the State House in Boston, the price calculated by the Market Administrator, pursuant to this paragraph, minus 6 cents.

(d) **Sales outside the marketing area.** The price to be paid by each handler to associations of producers or to producers, in the manner set forth in § 904.9, for milk utilized as class I milk outside the marketing area, shall be the price applicable pursuant to paragraphs (a) and (b) of this section adjusted by (a) the difference between such applicable price and the price ascertained by the Market Administrator as the prevailing price paid by processors for milk of equivalent use in the market where such class I milk is utilized and (b) the difference between the freight allowance, if any, set forth in paragraph (b) (2) of this section and an amount equal to the carload freight rate approved by the Interstate Commerce Commission for movement of milk in 40-quart cans from the shipping point for the plant where such class I milk is received from producers to the railroad delivery point serving the market where such class I milk is sold; Provided, That (1) if the market where such class I milk is utilized is less than 10 miles from the plant where such class I milk is received from producers, the railroad shipping point for such plant shall be presumed to be the railroad delivery point serving such market, and (2) if the market where such class I milk is utilized is located in Barnstable, Plymouth, Norfolk, Dukes and Nantucket Counties, Massachusetts, such handler's railroad delivery point in the marketing area shall be considered to be the railroad delivery point serving such market.

(e) Publication of class II price. On or before the fifth day after the end of each delivery period, the Market Administrator shall publicly announce the class II price in effect for such delivery period.* [Art. IV, Order 4, Feb. 7, 1936, as amended July 28, 1937]

904.6 Reports of handlers—(a) Periodic reports. On or before the eighth day after the end of each delivery period, each handler shall, except as set forth in § 904.7 (a), with respect to milk or cream which was, during such delivery period, received from producers, received from handlers or produced by such handler, report to the Market Administrator, in the detail and form prescribed by the Market Administrator, as follows:

- (1) The receipts at each plant from producers who are not handlers;
- (2) The receipts at each plant from any other handler, including any handler who is also a producer;
- (3) The quantity, if any, produced by such handler; and
- (4) The respective quantities of milk which were sold, distributed or used, including sales to other handlers, for the purpose of classification pursuant to § 904.4.

(b) Reports as to producers. Each handler shall report to the Market Administrator:

(1) Within 10 days after the Market Administrator's request with respect to any producer for whom such information is not in the files of the Market Administrator, and with respect to a period or periods of time designated by the Market Administrator, the name and address, the total pounds of milk delivered, the average butterfat test of milk delivered and the number of days upon which deliveries were made; and

(2) As soon as possible after first receiving milk from any producer: the name and address of such producer, the date upon which such milk was first received, the plant at which such producer delivered milk and the plant, if known, at which such producer delivered milk immediately prior to the beginning of delivery to such handler.

(c) Reports of payments to producers. Each handler shall submit to the Market Administrator within 30 days after the end of each delivery period his producer pay roll for such delivery period which shall show for each producer: The total delivery of milk with the average butterfat test thereof and the net amount of such producer's payment, with the prices, deductions, and charges involved.

(d) Outside cream purchases. Each handler shall report, as requested by the Market Administrator, his purchases, if any, of bottling quality cream from handlers who receive no milk from producers, showing the quantity and the source of each such purchase and the cost thereof at Boston.

(e) Verification of reports. In order that the Market Administrator may submit verified reports to the Secretary pursuant to § 904.3 (c), each handler shall permit the Market Administrator or his agent, during the usual hours of business, to verify the information contained in reports submitted in accordance with this section and weigh, sample and test milk for butterfat.* [Art. V, Order 4, Feb. 7, 1936, as amended July 28, 1937]

904.7 Handlers who are also producers—(a) Application of provisions. No provision hereof shall apply to a handler who is also a producer and who purchases no milk from producers or an association of producers, except that such handler shall make reports to the Market Administrator at such time and in such manner as the Market Administrator may request.

(b) Milk purchased from producers. In the case of a handler who is also a producer and who purchased milk from producers, the Market Administrator shall, before making the computations set forth in § 904.8, exclude from such handler's class I milk up to but not exceeding 90 percent of the quantity of milk produced and sold by him, exclude the milk purchased by him in each class from other handlers, and exclude from his remaining class II milk the balance of the milk produced and sold by him.* [Art. VI, Order 4, Feb. 7, 1936, as amended July 28, 1937]

904.8 Determination of uniform prices to producers—(a) Computation of value of milk for each handler. For each delivery period the Market Administrator shall compute, subject to the provisions of § 904.7, the value of milk sold or used by each handler, which was not purchased from other handlers, by (1) multiplying the quantity of such milk in each class by the price applicable pursuant to paragraphs (b), (c) and (d) of § 904.5 and (2) adding together the resulting value of each class.

(b) Computation and announcement of uniform prices. The Market Administrator shall compute and announce the uniform prices per hundredweight of milk delivered during each delivery period in the following manner:

(1) Combine into one total the respective values of milk, computed pursuant to paragraph (a) of this section, for each handler who made the report as required by § 904.6 (a) for such delivery period and who made the payments required by § 904.9 for milk received during the delivery period next preceding but one;

(2) Add the total net amount of the differentials applicable pursuant to § 904.9 (d).

(3) Subtract the total amount to be paid to producers pursuant to § 904.9 (a) (2);

(4) Divide by the total quantity of milk which is included in these computations, except that milk required to be paid for pursuant to § 904.9 (a) (2);

(5) Subtract not less than 4 cents nor more than 5 cents for the purpose of retaining a cash balance in connection with the payments set forth in § 904.9 (a) (3);

(6) Add an amount which will prorate, pursuant to § 904.8 (c), any cash balance available; and

(7) On or before the twelfth day after the end of each delivery period mail to all handlers and publicly announce (i) such of these computations as do not disclose information confidential pursuant to the Act, (ii) the blended price per hundredweight which is the result of these computations, and (iii) the class II price.

(c) Proration of cash balance. For each delivery period the Market Administrator shall prorate, by an appropriate addition

*For statutory citation, see note to § 904.1.

pursuant to paragraph (b) of this section, the cash balance, if any, in his hands from payments made by handlers for milk received during the delivery period next preceding but one, to meet obligations arising out of § 904.9 (a) (3).* [Art. VII, Order 4, as amended July 28, 1937]

904.9 Payments for milk—(a) Time and method of payment. On or before the twenty-fifth day after the end of each delivery period each handler shall make payment, subject to the butterfat differential set forth in paragraph (c) of this section, for the total value of milk received during such delivery period as required to be computed pursuant to § 904.8 (a), as follows:

(1) To each producer, except as set forth in subparagraph (2) of this paragraph, at the blended price per hundredweight computed pursuant to § 904.8 (b), subject to the differentials set forth in paragraph (d) of this section, for the quantity of milk delivered by such producer;

(2) To any producer, who did not regularly sell milk for a period of 30 days prior to the effective date hereof to a handler or to persons within the marketing area at the class II price, in effect for the plant at which such producer delivered milk, for all the milk delivered by such producer during the period beginning with the first regular delivery of such producer and continuing until the end of 2 full calendar months following the first day of the next succeeding calendar month;

(3) To producers, through the Market Administrator, by paying to or receiving from the Market Administrator, as the case may be, the amount by which the payments made pursuant to subparagraphs (1) and (2) of this paragraph are less than, or exceed, the value of milk as required to be computed for such handler pursuant to § 904.8 (a), as shown in a statement rendered by the Market Administrator on or before the twentieth day after the end of such delivery period.

(b) Errors in payments. Errors in making any of the payments prescribed in this section shall be corrected not later than the date for making payments next following the determination of such errors.

(c) Butterfat differential. If any producer has delivered to any handler during any delivery period milk having an average butterfat content other than 3.7 percent, such handler shall, in making the payments prescribed by § 904.9 (a) (1), (2) to such producer, add for each one-tenth of 1 percent of average butterfat content above 3.7 percent, or deduct for each one-tenth of 1 percent of average butterfat content below 3.7 percent, an amount per hundredweight which shall be calculated by the Market Administrator as follows: Divide by 33 the weighted average price per 40-quart can of bottling quality cream in the Boston market, as reported by the United States Department of Agriculture for the delivery period during which such milk is delivered, subtract 8 cents, and divide the result by 10.

(d) Location differentials. The payments to be made to producers by handlers pursuant to § 904.9 (a) (1) shall be subject to differentials as follows:

(1) With respect to milk delivered by a producer to a handler's plant located more than 40 miles from the State House in Boston,

there shall be deducted an amount per hundredweight equal to the freight (considering 85 pounds of milk per can), according to the tariff currently approved by the Interstate Commerce Commission for the transportation, in carload lots of milk in 40-quart cans, to Boston from the zone of location of the handler's plant.

(2) With respect to milk delivered by a producer to a handler's plant located not more than 40 miles from the State House in Boston, there shall be added 18 cents per hundredweight.

(3) With respect to milk delivered by a producer whose farm is located more than 40 miles, but not more than 80 miles, from the State House in Boston, there shall be added 23 cents per hundredweight.

(4) With respect to milk delivered by a producer whose farm is located not more than 40 miles from the State House in Boston, there shall be added 46 cents per hundredweight unless such addition gives a result greater than \$3.19 in which event there shall be added an amount which will give a result of \$3.19.

(e) Other differentials. In making the payments to producers set forth in § 904.9 (a) (1), (2), handlers may make deductions as follows:

(1) With respect to all milk delivered by producers to the plant of a handler which is located more than 40 miles from the State House in Boston and which is located more than 2 miles from a railroad shipping point, an amount not greater than 10 cents per hundredweight; Provided, That such deduction has been approved and made public by the Market Administrator prior to the time of payment.

(2) With respect to milk delivered by producers to a handler's plant which is located more than 14 miles, but not more than 40 miles, from the State House in Boston, an amount equal to 10 cents per hundredweight of class I milk actually sold or distributed in the marketing area from such plant, such total amount to be deducted pro rata on all milk delivered by such producer.

(3) With respect to milk delivered by producers to any handler's plant from which the average daily shipment of class I milk during any delivery period is less than 21,500 pounds, an aggregate amount, prorated among producers delivering milk to such plant equal to the difference between the freight to the marketing area at the carload rate and at the less than carload rate for the class I milk shipped during such delivery period.* [Art. VIII, Order 4, as amended July 28, 1937]

904.10 Marketing services—(a) Deductions for marketing services. Except as set forth in paragraph (b), each handler shall deduct an amount not exceeding 2 cents per hundredweight (the exact amount to be determined by the Market Administrator, subject to review by the Secretary) from the payments made direct to producers pursuant to § 904.9 with respect to all milk delivered to such handler during each delivery period by producers and shall pay such deductions to the Market Administrator on or before the twenty-fifth day after the end of such delivery period. Such monies shall be expended by the Market Administrator for market information

*For statutory citation, see note to § 904.1.

to and for verification of weights, sampling, and testing of milk purchased from said producers.

(b) **Producers' cooperative association.** In the case of producers for whom a cooperative association, which the Secretary determines to be qualified under the provisions of the Act of Congress of February 18, 1922 (42 Stat. 388; 7 U.S.C. 291–292), as amended, known as the "Capper-Volstead Act", is actually performing, as determined by the Secretary, the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions from the payments to be made direct to such producers, pursuant to § 904.9, as are authorized by such producers and, on or before the twenty-fifth day after the end of each delivery period, pay over such deductions to the association rendering such service.* [Art. IX, Order 4, as amended July 28, 1937]

904.11 Expense of administration—(a) Payments by handlers. As his pro rata share of the expense of the administration hereof, each handler, except as set forth in § 904.7 (a), shall, on or before the twenty-fifth day after the end of each delivery period, pay to the Market Administrator a sum not exceeding 2 cents per hundredweight with respect to all milk actually delivered to him during such delivery period by producers or produced by him, the exact sum to be determined by the Market Administrator subject to review by the Secretary; Provided, That each handler, who is a cooperative association of producers, shall pay such pro rata share of expense of administration only on that milk actually received from producers at a plant of such association.

(b) **Suits by Market Administrator.** The Market Administrator may maintain a suit in his own name against any handler for the collection of such handler's pro rata share of expense set forth in this section.*† [Art. X]

904.12 Responsibility. The liability of the handlers hereunder is several and not joint and no handler shall be liable for the default of any other handler.*† [Art. XII]

904.13 Separability. If any provision of this part is declared invalid or the applicability hereof to any person, circumstance or thing is held invalid, the validity of the remainder of this part and the applicability hereof to any other person, circumstance, or thing shall not be affected thereby.*† [Art. XIII]

904.14 Derogation. Nothing contained in this part is or shall be construed to be in derogation or modification of the rights of the Secretary or of the United States (a) to exercise any powers granted by the Act or otherwise, or (b) in accordance with such powers, to act in the premises whenever such action is deemed advisable.*† [Art. XIV]

904.15 Agents. The Secretary may, by a designation in writing, name any person (not a handler) including any officer or employee of the Government, or name any Bureau or Division in the Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this part.*† [Art. XV]

904.16 Effective time, termination, and suspension. This part, or any amendment hereto, shall become effective at such time as the Secretary may declare and shall continue in force until terminated or suspended, pursuant to this section. This part, any provision hereof or any amendment hereto, may be suspended or terminated by the Secretary, as to any or all handlers after such reasonable notice as the Secretary may give, and shall, in any event, terminate whenever the provisions of the Act authorizing it cease to be in effect. Unless otherwise provided by the Secretary in the notice of amendment, termination or suspension, of any or all provisions hereof, the amendment, termination or suspension shall not: (a) affect, waive or terminate any right, duty, obligation or liability which shall have arisen or may thereafter arise in connection with any provision of this part; (b) release or waive any violation of this part occurring prior to the effective date of such amendment, termination or suspension; or (c) affect or impair any rights or remedies of the Secretary, or of any other person, with respect to any such violation.*† [Art. XVI, secs. 1, 2, 3]

904.17 Continuing power and duty. If, upon the termination or suspension of this part, there are any obligations arising hereunder, the final accrual or ascertainment of which requires further acts by any handler, by the Market Administrator, or by any other person, the power and duty to perform such further acts shall continue notwithstanding such termination or suspension; Provided, That any such acts required to be performed by the Market Administrator, shall, if the Secretary so directs, be performed by such other person, persons or agency as the Secretary may designate.

The Market Administrator, or such other person as the Secretary may designate, (a) shall continue in such capacity until discharged by the Secretary, (b) from time to time account for all receipts and disbursements and deliver all funds or property on hand, together with the books and records of the Market Administrator, or such person, to such person as the Secretary shall direct, and (c) if so directed by the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title to all funds, property and claims vested in the Market Administrator or such person pursuant to this part.*† [Art. XVI, sec. 4]

904.18 Liquidation after termination or suspension. Upon the termination or suspension of this part or of any provision hereof, the Market Administrator, or such person as the Secretary may designate, shall, if so directed by the Secretary, liquidate the business of the Market Administrator's office, and dispose of all funds and property then in his possession or under his control, together with claims for any funds which are unpaid and owing at the time of such termination or suspension. Any funds collected pursuant to the provisions of this part over and above the amounts necessary to meet outstanding obligations and the expenses necessarily incurred by the Market Administrator or such person in liquidating and distributing such funds, shall be distributed to the contributing handlers and producers in an equitable manner.*† [Art. XVI, sec. 5]

*†For statutory and source citations, see note to § 904.1.

904.19 Determination of emergency. The Secretary hereby determines that an emergency exists which requires a shorter period of notice than three days, and that the period of notice, with respect to the issuance of this part, which is hereinafter provided, is reasonable under the circumstances.*† [Art. XVI, sec. 6]

PART 905—MILK IN FALL RIVER, MASSACHUSETTS, MARKETING AREA

| Sec. | Sec. |
|---|---|
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Section 905.1 Excerpt from findings. The Secretary of Agriculture, pursuant to the authority vested in him by section 8c of the Agricultural Adjustment Act (49 Stat. 753, 50 Stat. 246; 7 U.S.C., Sup., 608c), hereby orders that such handling of milk in the Fall River, Massachusetts, marketing area, as is in the current of interstate or foreign commerce, or which directly burdens, obstructs, or affects interstate or foreign commerce, shall from May 1, 1936, be in conformity to, and in compliance with, the following terms and conditions.**†† [Excerpt from findings]

** §§ 905.1 to 905.19, inclusive, issued under the authority contained in sec. 8c, 49 Stat. 753, 50 Stat. 246; 7 U.S.C., Sup., 608c.

†† The source of §§ 905.1 to 905.19, inclusive, (except for the amendment noted in the text,) is Order 5, Department of Agriculture, Apr. 15, 1936, effective May 1, 1936. (Order Ser., AAA)

905.2 Definitions. (a) “Fall River, Massachusetts, marketing area,” hereinafter called the “marketing area,” means (1) the city of Fall River, the towns of Swansea, Somerset, and so much of the town of Westport as lies west of the line running midway between Drift and Pine Hill Roads, all in the State of Massachusetts; and (2) the towns of Portsmouth, Tiverton, and Little Compton, all in the State of Rhode Island.

(b) “Person” means any individual, partnership, corporation, association, and any other business unit.

(c) “Producer” means any person, irrespective of whether any such person is also a handler, who produces milk in conformity with, or subject to, the health requirements applicable for milk to be sold for consumption as milk in the marketing area.

(d) “Handler” means any person, irrespective of whether such person is a producer or an association of producers, wherever located or operating, who engages in such handling of milk, which is sold as milk or cream in the marketing area, as is in the current of interstate commerce or which directly burdens, obstructs, or affects interstate commerce in milk and its products.

(e) “Market Administrator” means the person designated pursuant to § 905.3 as the agency for the administration hereof.

(f) “Delivery period” means the current marketing period from the 1st to, and including, the 15th day of each month, and from the 16th to, and including the last day of each month.

(g) “Base” means the quantity of milk calculated for each producer pursuant to § 905.8 (d).*† [Art. I]

905.3 Market Administrator—(a) Selection, removal, and bond. The Market Administrator shall be selected by the Secretary and shall be subject to removal by him at any time. The Market Administrator shall, within 45 days following the date upon which he enters upon his duties, execute and deliver to the Secretary a bond, conditioned upon the faithful performance of his duties, in an amount and with surety thereon satisfactory to the Secretary.

(b) Compensation. The Market Administrator shall be entitled to such reasonable compensation as may be determined by the Secretary.

(c) Powers and duties. The Market Administrator shall have power: to administer the terms and provisions hereof; and to receive, investigate, and report to the Secretary complaints of violations of the terms and provisions hereof; and the Market Administrator, in addition to the duties hereinafter described, shall: (1) keep such books and records as will clearly reflect the transactions provided for herein; (2) submit his books and records to examination by the Secretary at any and all times; (3) furnish such information and such verified reports as the Secretary may request; (4) obtain a bond with reasonable surety thereon covering each employee who handles funds entrusted to the Market Administrator; (5) employ and fix the compensation of such persons as may be necessary to enable him to administer the terms and provisions hereof; (6) publicly disclose to handlers and producers, unless otherwise directed by the Secretary, the name of any handler who, within

*†For statutory and source citations, see note to § 905.1.

15 days after the date upon which he is required to perform such acts, has not furnished security pursuant to § 905.12, made reports pursuant to § 905.6, or made payments pursuant to § 905.9; and (7) pay, out of the funds provided by § 905.11, the cost of his bond and of the bonds of such of his employees as handle funds entrusted to the Market Administrator, his own compensation, and all other expenses which will necessarily be incurred by him for the maintenance and functioning of his office and the performance of his duties.

(d) Responsibility. The Market Administrator, in his capacity as such, shall not be held responsible in any way whatsoever to any handler or any other person for errors in judgment, for mistakes or for other acts either of commission or omission, except for his own willful misfeasance, malfeasance, or dishonesty.*† [Art. II]

905.4 Classification of milk—(a) Sales and use classification. Milk purchased or handled by handlers shall be classified as follows:

(1) All milk sold or distributed as milk, chocolate milk or flavored milk drinks and all milk the sale or use of which is not established for classification in class II shall be class I milk.

(2) Milk specifically accounted for (i) as being sold, distributed, or disposed of other than as milk, chocolate milk, or flavored milk drinks, or (ii) as actual plant shrinkage within reasonable limits shall be class II milk.

(b) Interhandler sales. Milk sold by a handler to another handler shall be presumed to be class I milk; Provided, That if such selling handler, on or before the date fixed for filing reports pursuant to § 905.6, shall furnish proof satisfactory to the Market Administrator that such milk has been sold or used by the purchasing handler other than as class I milk, then, and in that event, such milk shall be classified as class II milk.*† [Art. III]

905.5 Minimum prices—(a) Class I prices. Each handler shall pay producers, in the manner set forth in § 905.9, for class I milk, not less than the following prices:

(1) Except as set forth in subparagraph (2) of this paragraph \$3.35 per hundredweight for such milk delivered at such handler's plant within the marketing area; and

(2) In the case of such milk purchased by the city of Fall River for its charity hospital cases and relief clients, \$2.65 $\frac{1}{4}$ per hundredweight for such milk delivered at such handler's plant within the marketing area.

(b) Class II price. Each handler shall pay producers, in the manner set forth in § 905.9, for class II milk, not less than that price per hundredweight, calculated for each delivery period by the Market Administrator as follows: Divide by 33 the weighted average price per forty-quart can of bottling quality cream in the Boston market, as reported by the United States Department of Agriculture for the delivery period during which such milk is delivered, and multiply the result by 3.7.

(c) Sales outside the marketing area. With respect to class I milk sold outside the marketing area by a handler, the price to be paid to producers, in lieu of the price set forth in paragraph (a),

shall be such price as the Market Administrator ascertains to be the prevailing price paid by processors, in the market where such milk is sold, for milk of the equivalent use.*† [Art. IV]

905.6 Reports of handlers—(a) Periodic reports. On or before the 5th day after the end of each delivery period each handler shall, with respect to milk or cream which was, during such delivery period, (1) received from producers, (2) received from handlers or (3) produced by such handler, report to the Market Administrator, in the detail and form prescribed by him, as follows: The receipts at each plant from producers who are not handlers, showing for each producer his name, the association, if any, of which he is a member, the quantity of milk delivered within, and in excess of, his base and the number of days on which milk was delivered; the receipts at each plant from any other handler, including any handler who is also a producer; the quantity, if any produced by such handler; and the respective quantities of milk which were sold or used, including sales to other handlers, for the purpose of classification pursuant to § 905.4.

(b) Reports as to producers. Each handler shall report to the Market Administrator:

(1) Within 10 days after the Market Administrator's request, with respect to any producer for whom such information is not in the files of the Market Administrator and with respect to a period or periods of time designated by the Market Administrator, the name and address, the total pounds of milk delivered, the average butterfat test of milk delivered, and the number of days on which deliveries were made; and

(2) As soon as possible after first receiving milk from any producer, the name and address of such producer and the date on which such milk was first received.

(c) Report of payment to producers. Each handler shall submit to the Market Administrator, at the request of the Market Administrator, his producer payroll, or a report, which shall show, for such delivery period and for each and every producer, (1) such producer's total delivery of milk with the average butterfat test thereof, (2) the portion of such delivery which was in excess of the base of such producer, and (3) the net amount of the payment made to him with the prices, deductions and charges involved.

(d) Verification of reports. In order that the Market Administrator may submit verified reports to the Secretary pursuant to § 905.3 (c), each handler shall permit the Market Administrator or his representative, during the usual hours of business, to verify the information contained in reports submitted by such handler pursuant to this section and weigh, sample and test milk for butterfat.*† [Art. V]

905.7 Handlers who are also producers—(a) Milk purchased from producers. In the case of a handler who is also a producer and who has purchased milk from producers, the Market Administrator shall, before making the computations set forth in § 905.8, exclude the milk purchased in each class from other handlers, exclude from his remaining class I milk up to but not exceeding 95 percent

*†For statutory and source citations, see note to § 905.1.

of the quantity of milk produced and sold by him, and exclude from his remaining class II milk the balance of the milk produced and sold by him.

(b) **Milk sold to other handlers.** Until such time as any handler, who is also a producer, has had a figure determined, pursuant to § 905.8 (e), to be used in the calculation of a base with respect to milk sold in bulk to other handlers, milk sold in bulk by such handler to another handler and sold or distributed by such purchasing handler as class I milk shall, in making the computation for such purchasing handler, pursuant to § 905.8 (a), be multiplied by the difference between the class I and class II prices, respectively, and the resultant amount shall be added to the total value of milk otherwise computed.*† [Art. VI]

905.8 Determination of uniform prices to producers—(a)

Computation of value of milk for each handler. For each delivery period the Market Administrator shall compute, subject to the provisions of § 905.7, the value of milk sold or used by each handler, which was not purchased from other handlers, by multiplying the quantity of such milk in each class by the price applicable pursuant to § 905.5 and adding together the resulting value of each class.

(b) **Computation and announcement of uniform prices.** The Market Administrator shall compute and announce the uniform prices per hundredweight of milk delivered during each delivery period in the following manner:

(1) Combine into one total the respective values of milk, computed pursuant to paragraph (a) of this section, for each handler who made payments as required by § 905.9 for milk received during the previous delivery period;

(2) Subtract the total amount to be paid to producers pursuant to § 905.9 (a) (2), (3);

(3) Divide by the total quantity of milk which is not in excess of the bases of producers and which is included in these computations;

(4) Subtract not less than 4 cents nor more than 5 cents for the purpose of retaining a cash balance in connection with the payments set forth in § 905.9 (a) (4);

(5) Add an amount per hundredweight of milk which will prorate, pursuant to paragraph (c) of this section, any cash balance available; and

(6) On or before the 10th day after the end of each delivery period, mail to all handlers and publicly announce (i) such of these computations as do not disclose information confidential pursuant to the Act, (ii) the blended price per hundredweight which is the result of these computations, and (iii) the class II price.

(c) **Proration of cash balance.** For each delivery period the Market Administrator shall prorate, by an appropriate addition pursuant to paragraph (b) of this section, the cash balance, if any, in his hands from payments made by handlers, during the delivery period next preceding but one, to meet the obligations arising out of § 905.9 (a) (4).

(d) Bases. The base of each producer shall be a quantity of milk for each delivery period calculated in the following manner: Multiply the base rating, if any, in effect for such producer pursuant to paragraph (e) of this section by the number of days on which such producer delivered milk during such delivery period.

(e) Base-ratings. For the purpose of calculating, pursuant to paragraph (d) of this section, the bases of producers, the Market Administrator shall determine a base rating with respect to deliveries of milk in bulk to handlers from the farm currently (except as otherwise provided) operated by each producer as follows:

(1) The rating in effect up to and including January 31, 1937, shall be such producer's average delivery per day during the calendar year 1935 or months thereof for which information is in the files of the Market Administrator;

(2) The rating in effect for the months of February and March, 1937, shall be such producer's average delivery per day during that quarter of 1936 which is lowest of the three quarters beginning April 1, July 1, and October 1, 1936, respectively, or, at the option of such producer, 85 percent of his average delivery per day during the months of 1936 for which the information is in the files of the Market Administrator, exclusive of the month which immediately follows a month when such producer has the first tuberculin test of his herd;

(3) The rating in effect for each calendar quarter subsequent to March 31, 1937, except as set forth in subparagraph (5) of this paragraph, shall be determined for each farm from which deliveries were made on not less than ten consecutive days of the first five delivery periods of the preceding calendar quarter, so that such new rating will be the rating which was in effect, or the average delivery per day for the days on which deliveries were made if less than the rating which was in effect during such five delivery periods, adjusted by a uniform quantity per farm which will bring the total of all such new ratings equal to 110–115 percent of the average daily class I milk sold by handlers during the last calendar quarter of the preceding calendar year;

(4) In the case of any producer who did not regularly sell milk for a period of 30 days prior to the effective date hereof to a handler or to persons within the marketing area, and who operates a farm for which no rating is in effect, the rating in effect until the next succeeding calendar quarter shall be the percentage of his average delivery per day, during the period of time when he receives the class II price pursuant to § 905.9 (a) (3), computed by dividing the total deliveries, during such period of time, of all producers for whom ratings were in effect not in excess of their bases by the total deliveries of all such producers;

(5) In the case of a producer who as a tenant moves his entire herd from one farm to another farm, the rating in effect for him during the remainder of the calendar quarter during which he moves may, at the option of such producer, be the rating for the farm previously operated by such producer instead of the rating, if any, which would otherwise be in effect for the newly occupied farm, in

which event the rating for the previously operated farm shall cease to be in effect;

(6) In the case of any producer for whom no rating is required to be in effect for any calendar quarter, pursuant to subparagraphs (3), (4), or (5), the rating in effect for each delivery period during such calendar quarter shall be the percentage of his average delivery per day computed by dividing, for such delivery period, the total deliveries of all producers, for whom ratings are in effect pursuant to subparagraphs (3), (4), and (5), not in excess of their bases by the total deliveries of all such producers.* [Art. VII, Order 5, Apr. 15, 1936, as amended, Mar. 29, 1937]

905.9 Payments for milk—(a) Time and method of payment. On or before the 15th day after the end of each delivery period, each handler shall make payment for the total value of milk received from producers during such delivery period, computed according to § 905.8 (a), subject to the butterfat differential set forth in paragraph (c) of this section, as follows:

(1) To producers, at the blended price per hundredweight computed pursuant to § 905.8 (b), for that quantity of milk delivered by each producer not in excess of the base of such producer;

(2) To producers, at the class II price, for that quantity of milk delivered by each producer in excess of his base;

(3) To any producer who did not regularly sell milk, during a period of 30 days next preceding the effective date hereof, to a handler or to persons within the marketing area, at the class II price for all the milk delivered by such producer during the period beginning with the first regular delivery by such producer and continuing until the end of two full calendar months following the first day of the next succeeding calendar month;

(4) To producers, through the Market Administrator, by paying to or receiving from the Market Administrator, as the case may be, the amount by which the payments made pursuant to this paragraph are less than, or exceed, the value of milk computed for each handler pursuant to § 905.9 (a) as shown in a statement rendered by the Market Administrator on or before the 15th day after the end of such delivery period.

(b) Errors in payments. Errors in making the payments prescribed in this section shall be corrected not later than the date for making payments next following the determination of such errors.

(c) Butterfat differential. If any producer has delivered to any handler during any delivery period milk having as average butterfat content other than 3.7 percent, such handler shall pay to each producer, for each one-tenth of one percent of average butterfat content above 3.7 percent, or shall deduct, for each one-tenth of one percent of average butterfat content below 3.7 percent, an amount per hundredweight which shall be calculated by the Market Administrator as follows: Divide by 330 the weighted average price per forty-quart can of bottling quality cream in the Boston market, as reported by the United States Department of Agriculture, for the delivery period during which such milk is delivered.*† [Art. VIII]

905.10 Marketing services—(a) Deductions for marketing services. Except as set forth in paragraph (b), each handler shall deduct 4 cents per hundredweight from the payments made direct to producers pursuant to § 905.9 with respect to all milk delivered to such handler during each delivery period by producers, and shall pay such deductions to the Market Administrator on or before the 15th day after the end of such delivery period. Such monies shall be expended by the Market Administrator for market information to, and for verification of weights, sampling and testing of milk purchased from said producers.

(b) Producers' cooperative association. In the case of producers for whom a cooperative association, which the Secretary determines to be qualified under the provisions of the Act of Congress of February 18, 1922 (42 Stat. 388; 7 U.S.C. 291–292), as amended, known as the "Capper-Volstead Act," is actually performing, as determined by the Secretary, the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions from the payments to be made direct to such producers, pursuant to § 905.9, as are authorized by such producers, and, on or before the 15th day after the end of each delivery period, pay over such deductions to the association rendering such services.*† [Art. IX]

905.11 Expense of administration—(a) Payments by handlers. As his pro rata share of the expense of the administration hereof, each handler shall, on or before the 15th day after the end of each delivery period, pay to the Market Administrator, with respect to all milk delivered to him by producers or produced by him during such delivery period, a sum not exceeding 3 cents per hundredweight, the exact sum to be determined by the Market Administrator subject to review by the Secretary. Each handler, who is a cooperative association of producers, shall pay such pro rata share of expense only on that milk received from producers at any plant of such association.

(b) Suits by Market Administrator. The Market Administrator may maintain a suit in his own name against any handler for the collection of such handler's pro rata share of expense set forth in this section.*† [Art. X]

905.12 Assurance of, and security for, payments to producers—(a) Amount. Each handler who purchases milk from producers or an association of producers shall, not less than 10 days before he is required to make his first payments pursuant to § 905.9 furnish to the Market Administrator security in the manner and form satisfactory to the Secretary, payable to the Market Administrator, as assurance of, and security for, payments to be made by such handler pursuant to § 905.9, in such amount as will equal the value of the milk purchased by such handler during a period of time equivalent to a delivery period. In the event that the value of milk purchased by such handler for each of three consecutive delivery periods exceeds or is less than the amount of such security furnished, such handler shall increase or decrease the security so

*†For statutory and source citations, see note to § 905.1.

that said security shall equal an amount not less than one-third of the total value of milk purchased during said three delivery periods.

(b) **Bonds under State statute.** If, pursuant to a State statute, any handler has furnished the duly constituted authority charged with the duty of administering the applicable provisions of such statute, a bond or other security, a part or all of which is allocable to, and assures any part of, the payments to be made to producers, such handler shall furnish to the Market Administrator, in manner and form satisfactory to the Secretary, security in such amount as will, when added to such allocable and otherwise conditioned amount of security furnished pursuant to such State statute, equal the amount of security required under paragraph (a) of this section.

(c) **Payments to producers.** In the event that a handler has failed to make payments, pursuant to § 905.9, the Market Administrator shall, within 15 days after such failure, send by registered mail to each producer who, according to the records of the Market Administrator, has delivered milk to such handler within the period of time involved, and to each association of producers a form for the submittal of sworn proof of claim against such handler. Upon the receipt of such sworn proof of claim, the Market Administrator shall audit such claim and in addition cause to be audited his claim, if any, as Market Administrator against such handler, and thereupon shall determine the total payments due from such handler.

Within 15 days after the determination of the amount of said payments, the Market Administrator shall make demand by registered letter upon such handler and upon his surety, if any, for the total payments. If, at the expiration of 15 days from such notice, the handler, or his surety, has not satisfied such claim, the Market Administrator shall, by conversion, sale or suit, or otherwise, make available the amount realizable from the security furnished the Market Administrator, and make distribution to the claimant or claimants, including the Market Administrator, in accordance with proofs filed, either ratably or in full, as the case may be.

If the amount realized from the security is more than sufficient to pay all claims, the balance arising therefrom shall be returned to such handler or the surety entitled thereto, as the case may be.

(d) **Release.** In the event that a handler shall cease to buy any milk from producers or an association of producers, and shall furnish to the Market Administrator proof of such cessation and of the discharge of his obligations to all producers and associations of producers, the Market Administrator shall, within 30 days after receipt of such proof, release any security in his hands pursuant to this section.*† [Art. XI]

905.13 Liability. The liability of the handlers hereunder is several and not joint and no handler shall be liable for the default of any other handler.*† [Art. XII]

905.14 Separability. If any provision of this part is declared invalid or the applicability hereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this part, and the applicability hereof to any other person, circumstance, or thing shall not be affected thereby.*† [Art. XIII]

905.15 Derogation. Nothing contained in this part is or shall be construed to be in derogation or modification of the rights of the Secretary or of the United States (a) to exercise any powers granted by the Act or otherwise, or (b) in accordance with such powers, to act in the premises whenever such action is deemed advisable.*† [Art. XIV]

905.16 Agents. The Secretary may, by a designation in writing, name any person (not a handler) including any officer or employee of the Government, or name any Bureau or Division in the Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this part.*† [Art. XV]

905.17 Effective time, suspension, and termination. This part, or any amendment hereto, shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated, pursuant to this section.

This part, any provision hereof or any amendment hereto, may be suspended or terminated by the Secretary, as to any or all handlers, after such reasonable notice as the Secretary may give, and shall, in any event, terminate whenever the provisions of the Act authorizing it cease to be in effect.

Unless otherwise provided by the Secretary in the notice of amendment, suspension, or termination, of any or all provisions hereof, the amendment, suspension, or termination shall not: (a) affect, waive or terminate any right, duty, obligation, or liability which shall have arisen or may thereafter arise in connection with any provision of this part; (b) release or waive any violation of this part occurring prior to the effective date of such amendment, suspension, or termination; or (c) affect or impair any rights or remedies of the Secretary, or of any other person, with respect to any such violation.*† [Art. XVI, secs. 1, 2, 3]

905.18 Continuing power and duty. If, upon the suspension or termination of this part, there are any obligations arising hereunder, the final accrual or ascertainment of which requires further acts by any handler, by the Market Administrator, or by any other person, the power and duty to perform such further acts shall continue notwithstanding such suspension or termination; Provided, That any such acts required to be performed by the Market Administrator shall, if the Secretary so directs, be performed by such other person, persons, or agency as the Secretary may designate.

The Market Administrator, or such other person as the Secretary may designate, (a) shall continue in such capacity until discharged by the Secretary, (b) from time to time account for all receipts and disbursements and deliver all funds or property on hand, together with the books and records of the Market Administrator, or such person, to such person as the Secretary shall direct, and (c) if so directed by the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title to all funds, property, and claims vested in the Market Administrator, or such persons, pursuant to this part.*† [Art. XVI, sec. 4]

905.19 Liquidation after suspension or termination. Upon the suspension or termination of this part or of any provision hereof, the Market Administrator, or such person as the Secretary may designate, shall, if so directed by the Secretary, liquidate the business of the Market Administrator's office, and dispose of all funds and property then in his possession or under his control, together with claims for any funds which are unpaid and owing at the time of such suspension or termination. Any funds collected pursuant to the provisions of this part, over and above the amounts necessary to meet outstanding obligations and the expenses necessarily incurred by the Market Administrator or such person in liquidating and distributing such funds, shall be distributed to the contributing handlers and producers in an equitable manner.*† [Art. XVI, sec. 5]

PART 906—FRESH LETTUCE, PEAS, AND CAULIFLOWER GROWN IN WESTERN WASHINGTON

| Sec. | Sec. |
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Section 906.1 Excerpt from findings. The Secretary of Agriculture, acting under the authority vested in him by section 8c of the Agricultural Adjustment Act (49 Stat. 753, 50 Stat. 246; 7 U.S.C., Sup., 608c), orders that the handling of lettuce, peas, and cauliflower grown in western Washington, in the current of interstate or foreign commerce, or so as directly to burden, obstruct, or affect interstate or foreign commerce in such commodities, from

and after May 4, 1936, shall be in conformity to, and in compliance with, the terms and conditions of this part.*† [Excerpt from findings]

*§§ 906.1 to 906.17, inclusive, issued under the authority contained in sec. 8c, 49 Stat. 753, 50 Stat. 246; 7 U.S.C., Sup., 608c.

†The source of §§ 906.1 to 906.17, inclusive, is Order 6, Department of Agriculture, Apr. 29, 1936, effective May 4, 1936. (Order Ser., AAA)

906.2 Definitions. As used in this part:

(a) "Secretary" means the Secretary of Agriculture of the United States.

(b) "Act" means the Agricultural Adjustment Act, approved May 12, 1933 (48 Stat. 31; 7 U.S.C. Chapter 26), as amended.

(c) "Person" means individual, partnership, corporation, association, or any other business unit.

(d) "Lettuce" means any and all varieties of lettuce grown in western Washington for sale for consumption in fresh form.

(e) "Peas" means any and all varieties of peas grown in western Washington for sale for consumption in fresh form.

(f) "Cauliflower" means any and all varieties of cauliflower grown in western Washington for sale for consumption in fresh form.

(g) "Grower" means any person engaged in producing lettuce, peas, or cauliflower in western Washington.

(h) "To ship" means to convey or cause to be conveyed, in the current of interstate or foreign commerce, or so as directly to burden, obstruct, or affect interstate or foreign commerce, by railroad, truck, boat, or in any other manner whatsoever, but not as a common carrier for another person.

(i) "To handle" means to ship, market, sell, consign, or in any way deal in lettuce, peas, or cauliflower whether as owner, agent, or otherwise in the current of interstate or foreign commerce, or so as directly to burden, obstruct, or affect interstate or foreign commerce.

(j) "Handler" means any person engaged in shipping, marketing, handling, selling, consigning or dealing in, in person, or as or through an agent, broker, or representative or otherwise, lettuce, peas, or cauliflower, from or within western Washington in the current of interstate or foreign commerce or so as directly to burden, obstruct, or affect interstate or foreign commerce.

(k) "Control Committee" means the Control Committee established pursuant to § 906.3.

(l) "Proration Committee" means the Proration Committee established pursuant to § 906.3.

(m) "Western Washington" means that part of the State of Washington lying west of the summit of the Cascade Mountains.

(n) "District" means the several geographical areas within western Washington designated and described as follows:

Auburn District, comprising that part of King County lying south of a line extending due east and west through the center of the city of Thomas; Sumner District, comprising Pierce County;

Seattle District, comprising that portion of King County, lying east of Puget Sound, south of the south line of Snohomish County, north of a line due east and west through the center of Riverton and west of Lake Washington, and a line extended due north from the northernmost point of said lake to the Snohomish county line, and a line due south from the southernmost point of said lake to its intersection with the above-described southern boundary of said district;

Kent District, comprising that portion of King County lying north of a line due east and west through the center of the city of Thomas, east of Puget Sound and bounded on the north and east by the southerly boundary of the Seattle District, and by a line drawn from the southeastern corner of said Seattle District to the intersection of the southerly boundary of said Kent District with the eastern boundary of King County;

Lake District, comprising that portion of King County lying east of the Seattle District and north of the Kent District;

North District, comprising the counties of Snohomish, Skagit, Whatcom, and Clallam; and

Grays Harbor District, comprising that part of western Washington not included within the other districts.

*†[Art. I]

906.3 Supervisory bodies—(a) Control Committee membership. A control committee is hereby established consisting of eleven (11) members. The members and their respective alternates shall be as follows:

(1) F. H. Hogue, Jr., Kent, Washington, as member, R. J. Rogers, Kent, Washington, as alternate, to represent the Kent District;

(2) E. K. Saito, Kent, Washington, as member, K. Hanada, Kent, Washington, as alternate, to represent the Kent District;

(3) John Yasumura, Auburn, Washington, as member, Harry Kuramoto, Auburn, Washington, as alternate, to represent the Auburn District;

(4) T. Sakahara, Sumner, Washington, as member, J. Yoshioka, Sumner, Washington, as alternate, to represent the Sumner District;

(5) Lloyd Pickering, Montesano, Washington, as member, Lee Foster, Montesano, Washington, as alternate, to represent the Grays Harbor District;

(6) John Zanassi, Woodinville, Washington, as member, H. E. Fleming, Seattle, Washington, as alternate, to represent the Seattle District;

(7) Henry Aries, Kirkland, Washington, as member, T. Matsuoka, Bellevue, Washington, as alternate, to represent the Lake District;

(8) Carl Nelson, Marysville, Washington, as member, Garvik Olsen, East Stanwood, Washington, as alternate, to represent the North District;

(9) J. A. Oliver, Kent, Washington, as member, George Berlin, Kent, Washington, as alternate, as representative at large;

(10) R. E. Wooden, Kent, Washington, as member, C. R. Walters, Bothell, Washington, as alternate, as representative at large; and

(11) Ed Orton, Sumner, Washington, as member, R. K. Sonneman, Auburn, Washington, as alternate, as representative at large.

The members and alternates named in this paragraph shall hold office for a term ending December 31, 1938, and until their successors are selected and shall qualify.

NOTE: Membership given as of June 1, 1938.

The successors to the above-named members of the Control Committee and their respective alternates shall be selected by the Secretary from nominations made by the handlers as hereinafter provided. Nominations for such successors shall be by an election in which all handlers shall be entitled to participate. In any such election, each handler shall be entitled to cast but one vote on behalf of himself, his agents, partners, affiliates, subsidiaries, and representatives for each nominee to be selected.

The number of nominees to be selected and the method of selecting members and alternates shall be as follows: For each member and each respective alternate two persons shall be nominated. Each of such nominees (except nominees at large) shall be either a handler whose principal place of business is in the district, or a grower who

produces lettuce, peas, or cauliflower in the district for which he is nominated. From nominations made for the district of Kent, the Secretary shall select two members and an alternate for each member to represent said district. From nominations made for each of the districts of Auburn, Sumner, Grays Harbor, Seattle, Lake, and North, the Secretary shall select one member and his alternate to represent said districts, respectively. From nominations made at large the Secretary shall select three members and their respective alternates.

(b) Proration Committee membership. A proration committee is hereby established consisting of thirteen (13) members. Of this number six (6) members and their respective alternates shall be handlers and six (6) members and their respective alternates shall be growers. The members and their respective alternates shall be as follows:

- (1) E. K. Saito, as member, and K. Hanada, as alternate;
- (2) F. H. Hogue, Jr., as member, and R. J. Rogers, as alternate;
- (3) Lee Foster, as member, and Marvin Witner, as alternate;
- (4) Roy Maeda, as member, and M. Taketa, as alternate;
- (5) T. Sakahara, as member, and Juro Yoshioka, as alternate;
- (6) D. Vitulli, as member, and T. Matsuoka, as alternate;
- (7) J. Yasumura, as member, and George Yasumura, as alternate;
- (8) John Zanassi, as member, and Henry Aries, as alternate;
- (9) T. Namba, as member, and W. Makiyama, as alternate;
- (10) Tony R. Morimizu, as member, and U. Yoshioka, as alternate;
- (11) H. S. Kuramoto, as member, and Thomas Iseri, as alternate;
- (12) S. Kamo, as member, and D. Kajitani, as alternate; and
- (13) Floyd Oles, as member, and J. A. Oliver, as alternate.

The members and alternates named in this paragraph shall hold office for a term ending December 31, 1938, and until their successors are selected and shall qualify.

NOTE: Membership given as of June 1, 1938.

The successors to the above-named members of the Proration Committee, except the last named, and their respective alternates shall be selected by the Secretary from nominations made by handlers and from nominations made by growers.

Nominations for successors to (a) the six (6) members and six (6) alternates to represent handlers shall be by an election in which all handlers shall be entitled to participate, and (b) the six (6) members and six (6) alternates to represent growers shall be by an election in which all growers shall be entitled to participate. In any such election each handler and each grower shall be entitled to cast but one vote on behalf of himself, agents, partners, affiliates, subsidiaries, and representatives for each nominee to be selected. The six (6) members representing handlers and the six (6) members representing growers selected by the Secretary may submit two nominations for each of the successors to the member and alternate last above-named.

The number of nominees to be selected and the method of selecting members and alternates shall be as follows: For each member and each respective alternate two (2) persons shall be nominated. From

nominations made for each member and for each alternate the Secretary shall select respectively a member and his alternate.

(c) **Failure to select nominees.** In the event nominations are not made pursuant to paragraphs (a) and (b) of this section by February 1 of any year, the Secretary may select such member or alternate without regard to nominations. If nominations for successors to the last-named member and alternate of the Proration Committee are not submitted on or before March 1 of any year the Secretary may select such successors without such nomination.

(d) **Term of office of committee members.** Members of the Control and Proration Committees and their respective alternates, subsequent to the members and alternates named in paragraphs (a) and (b), shall be selected annually for a term of one year, beginning the first day of January, and shall serve until their respective successors shall be selected and shall qualify. Any person selected as member or alternate of the Control or Proration Committees shall qualify by filing a written acceptance of his appointment with the Secretary or with his designated representative.

(e) **Vacancies.** To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member of the Proration or Control Committees, a successor for his unexpired term shall be selected in the manner indicated in paragraphs (a) and (b) of this section, within twenty (20) days after such vacancy occurs. If a nomination to fill such vacancy is not made within twenty (20) days, the Secretary may select a member to fill such vacancy without regard to nominations.

(f) **Organization.** The members of the Control and Proration Committees shall select a chairman from their respective memberships. The Control and Proration Committees shall select such other officers and adopt such rules for the conduct of their respective business as they may deem advisable. The Control and Proration Committees shall give the Secretary or his designated agent and representatives the same notice of meetings of the respective committees as is given to members thereof.

(g) **Inability of members to serve.** An alternate for a member of the Control or Proration Committee shall act in the place and stead of such member in his absence, or in the event of his removal, resignation, disqualification, or death until a successor for his unexpired term has been selected.

In the event any member of the Control or Proration Committee and his alternate are both unable to attend a meeting of the Control or Proration Committee, such member or, in the event he is disqualified or the position is vacant, his alternate may designate, subject to the approval of the Secretary, a temporary substitute to attend such meeting. At such meeting the temporary substitute may act in the place and stead of the member.

The members of the Control Committee and the Proration Committee shall serve without compensation, but shall be entitled to expenses necessarily incurred in the performance of their duties hereunder.

(h) Powers and duties of Control Committee. The Control Committee shall have the following powers and duties:

- (1) To administer, as hereinafter specifically provided, the terms and provisions of this part;
- (2) To make, in accordance with the provisions hereinafter contained, administrative rules and regulations;
- (3) To receive, investigate, and report to the Secretary of Agriculture complaints of violations of this part;
- (4) To recommend to the Secretary of Agriculture amendments to this part;
- (5) To act as intermediary between the Secretary and any grower or handler;
- (6) To keep minute books and records which will clearly reflect all of its acts and transactions, which minute books and records shall at any time be subject to the examination of the Secretary;
- (7) To furnish to the Secretary such available information as he may request;
- (8) To select a managing agent and to appoint such employees as it may deem necessary and to determine the salaries and define the duties of any such employees;
- (9) To perform such duties in connection with the administration of section 32 of the Act to amend the Agricultural Adjustment Act, and for other purposes (49 Stat. 774, 1151; 7 U.S.C., Sup., 612c), as may from time to time be assigned to it by the Secretary; and
- (10) To confer with handlers and growers in other areas with respect to the formulation or operation of marketing agreements providing for the regulation of shipments among the several areas where lettuce, peas, or cauliflower are grown.

(i) Powers and duties of the Proration Committee. The Proration Committee shall have the following powers and duties:

- (1) To administer, as hereinafter specifically provided, those provisions of this part under its jurisdiction; and
- (2) To adopt administrative rules and regulations for the performance of its duties under this part.

(j) Voting procedure and removal or suspension of members. Any decision of the Control Committee shall be by the affirmative vote of not less than seven (7) members who have qualified by filing their written acceptance and who are eligible to vote. Any decision of the Proration Committee shall be by the affirmative vote of not less than eight (8) of its members who have qualified by filing their written acceptance and who are eligible to vote, at least four (4) of whom shall be members selected by growers.

The members of the Control and Proration Committees (including successors, alternates, or other persons selected by the Secretary) and any agent or employee appointed or employed by such committees shall be subject to removal or suspension by the Secretary at any time. Each action of the Control and Proration Committees shall be subject to the continuing right of the Secretary to disapprove of the same at any time, and upon such disapproval, shall be deemed null and void except as to acts done in reliance thereon or in compliance therewith.

(k) Funds and other property. All funds received by the Control Committee pursuant to any of the provisions of this part shall be used solely for the purposes herein specified and the Secretary may require the Control Committee and its members to account for all receipts and disbursements.

The managing agent selected by the Control Committee shall also be the managing agent for the Proration Committee, and shall have charge of all books, records, and other property of said committees. He shall act as secretary to all sub-committees which may be selected or appointed. Upon the death, resignation, removal, or expiration of the term of office of any member of the Control or Proration Committees or of the managing agent, all books, records, funds and other property in his possession shall be delivered to the Control Committee or to his successor in office, and such assignments and other instruments shall be executed as may be necessary to vest in the Control Committee or his successor full title to all the books, records, funds, and other property in his possession or under his control.*† [Art. II]

906.4 Period proration—(a) Determination of regulation periods. Whenever the Proration Committee deems it advisable to regulate the flow of shipments of lettuce, peas, or cauliflower in the current of interstate or foreign commerce during any particular period or periods within the season, it shall recommend to the Secretary the establishment of a regulation period or series of regulation periods, including the time of commencement and duration thereof. Such recommendation shall be made at a meeting of the Proration Committee held at least forty-eight (48) hours prior to the commencement of such recommended regulation period or series of regulation periods. The Proration Committee shall promptly notify handlers and growers of such recommendation and such notice shall contain a direction to handlers and growers to make the applications required pursuant to § 906.4 (b).

Based upon the recommendations made pursuant to this paragraph or other information, the Secretary may establish a regulation period or series of regulation periods, if he has reason to believe that regulation of shipments of lettuce, peas, or cauliflower in the current of interstate or foreign commerce, during any particular period or periods within the season, will tend to effectuate the declared policy of the Act.

Whenever the Secretary establishes a regulation period or series of regulation periods, he shall notify the Proration Committee of the establishment thereof. The Proration Committee shall give notice of any regulation of shipments established by the Secretary by issuing a press release and by such other means as the Proration Committee deems necessary to give immediate information of such order to the growers and handlers affected thereby.

(b) Applications by handlers. Each handler (including any grower who has not given a handler authority to handle his lettuce, peas, or cauliflower shipments) desiring to ship lettuce, peas, or cauliflower during such regulation period, shall make application

to the Proration Committee for an allotment at such time and in such manner as said committee may prescribe. Applications shall be substantiated in such manner as the Proration Committee may prescribe. Each handler shall state in his application the quantity of lettuce, peas, or cauliflower which he has available and intends to ship during such regulation period. Such statement will show (1) the quantity which he owns and (2) the quantity which he has authority to handle for each owner or grower thereof, together with the name of each such owner or grower. During any such regulation period, any quantity prohibited from shipment, pursuant to § 906.5, shall not be considered as available for shipment for the purposes of this section.

(c) **Revision of application.** The Proration Committee shall check the accuracy of any application filed pursuant to paragraph (b) of this section and, subject to the opportunity for applicants to be heard, under such rules as may be prescribed by the said committee, shall revise the same when necessary to conform to the check.

(d) **Available and intended for shipment.** From the applications filed with the Proration Committee pursuant to paragraph (b) hereof, as the same may be revised pursuant to paragraph (c) hereof, said committee shall list the quantity of lettuce, peas, or cauliflower which each handler has available and intends for shipment during such regulation period and compute the total quantity which all handlers have available and intend to ship during such regulation period.

(e) **Advisable shipments.** The Proration Committee shall determine for each regulation period the total quantity of lettuce, peas, or cauliflower which it deems advisable to be shipped during such regulation period. In determining such advisable quantity, said committee shall give consideration to the supply of and demand for lettuce, peas, or cauliflower for which regulation is contemplated.

(f) **Allotments.** The Proration Committee shall compute the allotment percentage by dividing the quantity deemed advisable to be shipped, determined pursuant to paragraph (e), by the total quantity available and intended for shipment, computed pursuant to paragraph (d) of this section. Said committee shall compute the allotment of each applicant by applying the allotment percentage to each applicant's quantity of lettuce, peas, or cauliflower available and intended for shipment, as listed pursuant to paragraph (d) of this section. Thereupon said committee shall report to the Secretary its computations made pursuant to this paragraph, and to paragraphs (d) and (e) of this section, together with all information and data on which such computations are based.

(g) **Determination of allotments by the Secretary.** From the reports and computations made pursuant to this section or any other available information the Secretary shall determine: (1) the quantity of lettuce, peas, or cauliflower available and intended for shipment by each handler during such regulation period; (2) the total quantity of lettuce, peas, or cauliflower available and intended for shipment by all handlers during such period; (3) the total quantity

of lettuce, peas, or cauliflower advisable for shipment during such period; (4) the allotment percentage for such period; and (5) the allotment for each handler during such period.

The Secretary shall advise the Proration Committee of the determinations made pursuant to this paragraph, and the committee shall notify each handler of his allotment and of the allotment percentage.

Each handler shall apportion the quantity of lettuce, peas, or cauliflower represented by his allotment equitably among the growers whose lettuce, peas, or cauliflower he has authority to ship (including lettuce, peas, or cauliflower produced by such handler).

(h) Transfer of allotments. Subject to procedure, rules, and regulations prescribed by the Proration Committee and approved by the Secretary, handlers to whom allotments have been made may transfer such allotments, in whole or in part. The amount of such transfers shall be deducted from the allotment of the transferor and added to the allotment of the transferee.

(i) Overshipment and undershipment. No handler shall handle lettuce, peas, or cauliflower during any proration period in excess of the allotment fixed for him by the Secretary, except for additional allotment transferred to him pursuant to the foregoing provisions of this section: Provided, however, That an overshipment of an allotment by a handler of lettuce, peas, or cauliflower of not more than one-half ($\frac{1}{2}$) car, if said quantity was loaded to complete the filling of a fractional part of a car of such handler's allotment and is reported to the Proration Committee within twenty-four (24) hours after such shipment, shall not be a violation of this part. Any such overshipment shall be deducted from such handler's next succeeding allotment.

Any undershipment of an allotment by a handler shall be reported to the Proration Committee within twenty-four (24) hours thereafter, and the amount of such undershipment may be shipped during such handler's next succeeding allotment period, and during no other allotment period.

(j) Termination of proration period. Based upon the recommendation of the Proration Committee, or any other information, the Secretary may terminate any proration period if proration is rendered unnecessary by reason of increased demand, reduction in the available supply, or other causes, so that the continuation of such regulation would not tend to effectuate the declared policy of the Act.

(k) Petitions for adjustments of applications for allotments. Any handler or grower dissatisfied with the revision of his application by the Proration Committee may request a reconsideration of such revision and may appeal to the Secretary. In the event of such appeal to the Secretary, the Proration Committee shall furnish a report to the Secretary setting forth the action taken and the reasons therefor. The petitioner involved shall abide by the determination of the Proration Committee pending the disposition of such petition by the Secretary.*† [Art. III]

906.5 Regulation by grades and sizes—(a) Recommendation of the Proration Committee. Whenever the Proration Committee deems it advisable to regulate the shipment of any grade or size of

lettuce, peas, or cauliflower, produced in a specified period, in the current of interstate or foreign commerce, it may so recommend to the Secretary. The Proration Committee shall furnish the Secretary all data and information upon which it acted in making such recommendation, which shall include factors affecting the supply of and demand for lettuce, peas, or cauliflower by grades and sizes thereof.

(b) **Regulation of shipments.** Based upon such recommendation and information furnished by the Proration Committee, or other information, the Secretary may regulate the quantity of any grade or size of lettuce, peas, or cauliflower, produced in a specified period, which may be shipped during any period. Such regulation of shipments may be accomplished by prohibiting the shipment of certain grades or sizes of lettuce, peas, or cauliflower during such period, or by prohibiting the shipment of a part of any grade or size of lettuce, peas, or cauliflower.

When the Secretary determines to regulate shipments as provided herein, he shall immediately notify the Proration Committee of such determination and the date of the commencement of such regulation period, by telegraph or any other means which he deems advisable. The Proration Committee shall immediately notify each handler of (1) the institution of such regulation period; (2) the grades or sizes, or the portions thereof, which are prohibited from shipment; and (3) any other information that the Proration Committee deems advisable under the circumstances.

(c) **Exemptions.** In the event a regulation period is established on lettuce, peas, or cauliflower pursuant to this section, the Proration Committee shall determine the percentage which the grades and sizes of the crop permitted to be shipped is of the total crop which could be shipped in the absence of regulation under this section. The Proration Committee shall forthwith announce this percentage and the procedure by which exemption certificates will be issued to growers pursuant to this paragraph.

If any grower of lettuce, peas, or cauliflower shall show to the Proration Committee that the regulation of shipments will allow him to ship during the period a percentage of his crop less than the percentage found in accordance with this paragraph, the Proration Committee shall issue to him an exemption certificate allowing the shipment of such a quantity of the limited grade or size as will make the percentage of his crop that may be shipped equal to the percentage found in accordance with this paragraph.

If any grower is dissatisfied with the determination by the Proration Committee with respect to such exemption certificate he may appeal to the Secretary.

(d) **Charitable purposes.** Nothing contained in this part shall be construed to authorize any limitation of the right to ship lettuce, peas, or cauliflower for consumption by charitable institutions or relief agencies.*† [Art. IV]

906.6 Grading and inspection. All shipments of lettuce, peas, or cauliflower shall be graded and certified on the basis of the grades now promulgated by the United States Department of Agriculture,

or as the same may be modified or changed hereafter, during each shipping season.

During such season each handler shall utilize the standard Federal-State inspection service, and pay the cost of this service. Each shipment, in whatever quantity, shall be accompanied by a standard inspection certificate or official memorandum thereof indicating its conformity to the said grades.*† [Art. V]

CROSS REFERENCE: For regulations under the Farm Products Inspection Act pertaining to the inspection and certification service for fruits, vegetables, and other products, see Part 51.

906.7 Standardization of containers. The Control Committee may prescribe specifications for containers in which lettuce, peas, or cauliflower shall be packed: Provided, however, That such specifications shall be subject to the prior approval of the Secretary. In the event standards have been or shall be promulgated for any of such containers under the standard container acts of the United States, the specifications prescribed by the Control Committee shall conform thereto.

In the event specifications have been prescribed and made effective in accordance with this section, no handler shall ship lettuce, peas, or cauliflower in containers other than those conforming with the specifications prescribed for the respective crops by the Control Committee.*† [Art. VI]

CROSS REFERENCE: For regulations under the Standard Container Acts, see Part 41.

906.8 Expenses and assessments. The Control Committee and the Proration Committee are authorized to incur such expenses as the Secretary finds may be necessary to carry out their functions under this part. The funds to cover such expenses shall be acquired by the levying of assessments as hereinafter provided.

Each handler shall pay to the Control Committee upon demand such handler's pro rata share, as is approved by the Secretary, of the expenses in the amount of three thousand three hundred fifty dollars (\$3,350) (which amount the Secretary has found will necessarily be incurred by the Control Committee and the Proration Committee during the season of 1936), or expenses in such other amount as the Secretary may later find will necessarily be incurred by said committees during such season for the maintenance and functioning of said committees during the said season as set forth in this part. Each handler's share of such expenses shall be that proportion thereof which the total quantity of lettuce, peas, or cauliflower shipped by such handler during said season is of the total quantity of lettuce, peas, or cauliflower shipped by all handlers during said season, and, such pro rata share is hereby approved by the Secretary. The initial assessment upon each handler shall be one dollar and fifty cents (\$1.50) per car, or its equivalent, of lettuce, peas, or cauliflower shipped by such handler, and said assessment shall be adjusted from time to time by the Control Committee, with the approval of the Secretary in order to provide funds sufficient in amount to cover any later finding by the Secretary of estimated expenses or the actual expenses of the Control Committee and the Proration Committee during said

season. The assessments of each handler for any season shall be due at such time and shall be payable in such installments, if any, as the Control Committee shall determine.

For seasons subsequent to the season of 1936, each handler shall pay to the Control Committee upon demand, such handler's pro rata share as is approved by the Secretary of such expenses as the Secretary may find will necessarily be incurred by the Control Committee and the Proration Committee for the maintenance and functioning of the said committees as set forth in this part.

In order to provide funds to carry out the functions of the said committees prior to the commencement of shipments in any season, handlers may make advance payments of assessments, which advance payments shall be credited to such handlers and the assessments of such handlers shall be adjusted so that such assessments are based upon the quantity of lettuce, peas, or cauliflower shipped by such handlers during such season.

At the end of each season the Control Committee shall credit each contributing handler with the excess of the amount paid by such handler above his pro rata share of the expenses, or debit such handler with the difference between his pro rata share and the amount paid by such handler. Any such debits shall become due and payable upon the demand of the Control Committee.

From funds acquired pursuant to this section the Control Committee shall pay the salaries of the employees of the Control Committee and the Proration Committee, if any, and the expenses necessarily incurred in the maintenance and functioning of said committees in the performance of their duties under this part.*† [Art. VII]

906.9 Reports. Upon the request of the Control Committee, or the Proration Committee, and in accordance with forms of reports to be supplied by the Secretary, each handler shall furnish in such manner and at such times as said committee prescribes, such information as will enable it to perform its duties under this part.*† [Art. VIII]

906.10 Liability of Control and Proration Committee members. No member of the Control or Proration Committee, nor any employee thereof, shall be held responsible individually in any way whatsoever to any handler or any other person for errors in judgment, mistakes, or other acts either of commission or omission as such member or employee, except for acts of dishonesty.*† [Art. IX]

906.11 Separability. If any provision of this part is declared invalid or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this part or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.*† [Art. X]

906.12 Derogation. Nothing contained in this part is or shall be construed to be in derogation or in modification of the rights of the Secretary or of the United States (a) to exercise any powers granted by the Act or otherwise, or (b) in accordance with such powers to act in the premises whenever such action is deemed advisable.*† [Art. XI]

*†For statutory and source citations, see note to § 906.1.

906.13 Amendments. Amendments to this part may from time to time be proposed by the Control Committee.*† [Art. XII]

906.14 Duration of immunities. The benefits, privileges, and immunities conferred by virtue of this part shall cease upon its termination except with respect to acts done under and during the existence of this part, and benefits, privileges, and immunities conferred by this part upon any person shall cease upon its termination as to such party except with respect to acts done under and during the existence of this part.*† [Art. XIII]

906.15 Agents. The Secretary may by a designation in writing name any person (not subject to this part), including any officer or employee of the Government, or any Bureau or Division in the Department of Agriculture to act as his agent or representative in connection with any of the provisions of this part.*† [Art. XIV]

906.16 Effective time and termination. This part shall become effective at such time as the Secretary may declare above his signature attached hereto, and shall continue in force until terminated in one of the ways hereinafter specified.

The Secretary may at any time terminate this part by giving at least one (1) day's notice by means of a press release or in any other manner which the Secretary may determine.

The Secretary shall terminate or suspend the operation of this part, or of any provision thereof, whenever he finds that this part, or such provision thereof, does not tend to effectuate the declared policy of the Act.

The Secretary shall terminate this part with respect to lettuce, peas, or cauliflower, at the end of any marketing period whenever he finds that such termination is favored by a majority of the growers of lettuce, peas, or cauliflower respectively, who during the preceding marketing period, have been engaged in the production for market of lettuce, peas, or cauliflower in western Washington: Provided, That such majority have during such period produced more than fifty (50) percent of the volume of such lettuce, peas, or cauliflower produced within western Washington, but such termination shall be effective only if notice thereof is given on or before December 31 of such marketing period.

This part shall in any event terminate whenever the provisions of the Act authorizing it cease to be in effect.*† [Art. XV, secs. 1, 2]

906.17 Proceedings after termination. Upon the termination of this part the members of the Control Committee then functioning shall continue as joint trustees of all funds and property then in the possession or under the control of the Control and Proration Committees, including claims for any funds unpaid or property not delivered at the time of such termination for the purpose of liquidating all matters with respect to this part. Said trustees (a) shall continue in such capacity until discharged by the Secretary; (b) shall from time to time account for all receipts and disbursements and deliver all funds and property on hand, together with all books and records of the Control and Proration Committees and the joint trustees, to such person as the Secretary shall direct; and (c) shall, upon

the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title to all of the funds and claims vested in the Control Committee or the joint trustees pursuant to this part; and (d) shall refund to each contributing handler the excess of the amount paid by such handler above his pro rata share of expenses, or debit each handler with the difference between his pro rata share and the amount paid by any such handler, if such amount is less than his pro rata share. Any such debit shall become due and payable upon the demand of the said committee. Nothing stated herein shall be deemed to preclude the bringing of a suit for assessments levied by the Control Committee at any time prior to the termination of this part.

Any person to whom funds, property, or claims have been delivered by the Control or Proration Committee, or members thereof upon direction of the Secretary, as herein provided, shall be subject to the same obligations and duties with respect to said funds, property, or claims as are hereinabove imposed upon the members of said committees or upon said joint trustees.*† [Art. XV, sec. 3]

PART 908—WATERMELONS GROWN IN FLORIDA, GEORGIA, NORTH CAROLINA AND SOUTH CAROLINA

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Section 908.1 Excerpt from findings. The Secretary of Agriculture, acting under the authority vested in him by section 8c of the Agricultural Adjustment Act (49 Stat. 753, 50 Stat. 246; 7 U.S.C., Sup., 608c), orders that the handling of watermelons grown in Florida, Georgia, North Carolina and South Carolina, in the current of interstate or foreign commerce, or so as directly to burden, obstruct, or affect interstate or foreign commerce in such commodity, from and after May 12, 1936, shall be in conformity to, and in compliance with, the terms and conditions of this part.*†† [Excerpt from findings]

*§§ 908.1 to 908.14, inclusive, issued under the authority contained in sec. 8c, 49 Stat. 753, 50 Stat. 246; 7 U.S.C., Sup., 608c.

††The source of §§ 908.1 to 908.14, inclusive, is Order 8, Department of Agriculture, May 8, 1936, effective May 12, 1936. (Order Ser., AAA)

908.2 Definitions. As used in this part:

(a) The term "Secretary" means the Secretary of Agriculture of the United States.

(b) The term "Act" means the Agricultural Adjustment Act approved May 12, 1933 (48 Stat. 31; 7 U.S.C. Chapter 26), as amended.

(c) The term "person" means individual, partnership, corporation, association, and any other business unit.

(d) The term "Southeastern States" means the States of Florida, Georgia, South Carolina and North Carolina.

(e) The term "watermelon" means and includes all varieties of watermelons grown within the aforesaid Southeastern States and every grade and size thereof.

(f) The term "producer" means any person who produces watermelons for sale.

(g) The term "handler" means any person who ships or otherwise handles watermelons or permits another person to ship or otherwise handle watermelons in the name of such first person.

(h) The term "to handle" or "to ship" means to convey or cause to be conveyed (other than as a carrier for another) watermelons from a point within the Southeastern States to a market outside such States.

(i) The term "district" means any of the following areas:

"South Florida District" means that part of the State of Florida lying within or south of the Counties of Levy, Marion, Putnam and Flagler.

"North Florida District" means that part of the State of Florida not included in the South Florida District.

"North Georgia District" means that part of the State of Georgia lying within or north of the Counties of Stewart, Webster, Sumter, Crisp, Wilcox, Telfair, Jeff Davis, Appling, Wayne and Glynn.

"South Georgia District" means that part of the State of Georgia not included in the North Georgia District.

"South Carolina District" means all of the State of South Carolina.

"North Carolina District" means all of the State of North Carolina.

*†[Art. I]

908.3 Control Committee—(a) Membership and organization. A control committee is hereby established consisting of twelve (12) members. The members and their respective alternates shall be as follows:

(1) D. D. Faircloth, Trenton, Florida, whose alternate is W. R. Haygood, Oxford, Florida, representing producers in the South Florida District;

(2) E. D. Patterson, Graceville, Florida, whose alternate is W. M. Scruggs, Monticello, Florida, representing producers in the North Florida District;

(3) L. E. Holloway, Leesburg, Florida, whose alternate is Andrew Spado, Clearwater, Florida, representing handlers from both the South Florida District and the North Florida District;

(4) W. D. Hasty, Thomasville, Georgia, whose alternate is C. S. Jones, Sylvester, Georgia, representing producers in the South Georgia District;

(5) R. G. Lumsden, Vienna, Georgia, whose alternate is C. G. Kitchens, Danville, Georgia, representing producers in the North Georgia district.

(6) P. N. Whitehurst, Adel, Georgia, whose alternate is Charles H. Cannon, Moultrie, Georgia, representing the Sowega Melon Growers' Association;

(7) M. H. O'Neal, Estill, South Carolina, whose alternate is J. F. Causey, Furman, South Carolina, representing producers in the South Carolina District;

(8) J. T. Herndon, Ehrhardt, South Carolina, whose alternate is G. A. Sanders, Fairfax, South Carolina, representing handlers from the South Carolina District;

(9) Martin McKinnon, Laurinburg, North Carolina, whose alternate is A. F. McLean, Rowland, North Carolina, representing producers in the North Carolina District;

(10) Hinton James, Laurinburg, North Carolina, whose alternate is W. DeB. McEachin, Laurinburg, North Carolina, representing handlers from the North Carolina District; and

(11) H. L. Cartwright, Tifton, Georgia, and Roy E. Parrish, Adel, Georgia, whose respective alternates are S. T. Hall, Dublin, Georgia, and J. B. Easterlin, Montezuma, Georgia, representing handlers from both the South Georgia District and the North Georgia District. The aforesaid members and alternates shall hold office for a term ending with the first Monday in April 1939, and until their successors are selected and qualified.

NOTE: Membership given as of June 1, 1938.

(b) Successor members. (1) The successors to the above-named members and their respective alternates shall be selected by the Secretary from the respective nominees of the groups hereinafter designated to make nominations.

If nominations are not made for any one or more of such successors as herein provided, the Secretary may select the successors to any member or alternate for which a nomination has not been made, without regard to nominations.

(2) Nominations of four (4) persons for a member and his alternate shall be made by each of the following groups:

(i) Producers of watermelons, who during the year preceding that in which the nominations are being made, produced watermelons in the South Florida District;

(ii) Producers of watermelons, who during the year preceding that in which the nominations are being made, produced watermelons in the North Florida District;

(iii) Producers of watermelons, who during the year preceding that in which the nominations are being made, produced watermelons in the South Georgia District;

(iv) Producers of watermelons, who during the year preceding that in which the nominations are being made, produced watermelons in the North Georgia District;

(v) Producers of watermelons, who during the year preceding that in which the nominations are being made, produced watermelons in the South Carolina District;

(vi) Producers of watermelons, who during the year preceding that in which the nominations are being made, produced watermelons in the North Carolina District;

(vii) Handlers of watermelons, who during the year preceding that in which the nominations are being made, shipped watermelons from points within the State of Florida;

(viii) Handlers of watermelons, who during the year preceding that in which the nominations are being made, shipped watermelons from points within the State of South Carolina;

(ix) Handlers of watermelons, who during the year preceding that in which the nominations are being made, shipped watermelons from points within the State of North Carolina; and

(x) Sowega Melon Growers' Association.

(3) Nominations of eight (8) persons for two (2) members and their alternates shall be made by handlers who, during the year pre-

ceding that in which the nominations are being made, shipped watermelons from points within the State of Georgia.

The nominees of the producer groups shall be producers of watermelons whose principal business during the year preceding that in which the nominations are being made, was other than the handling of watermelons.

In the year 1936, all nominations shall be submitted to the Secretary within thirty (30) days after the effective date of this part and in ensuing years, all nominations shall be submitted to the Secretary on or before the 20th day of March of the year in which members of the control committee are to be selected.

(4) Nominees for members of the Control Committee and their alternates shall be selected by the above-designated groups in the following manner:

(i) Producer nominations. The Control Committee shall cause to be held in the year 1936 within fifteen (15) days after the effective date of this part and in ensuing years, not less than twenty (20) days prior to the expiration of the terms of office of the members of the Control Committee and their alternates, in each watermelon-producing county which lies within a district, a meeting of the producers who during the preceding year produced watermelons in such county. Each such meeting shall select its chairman and secretary. At each such meeting a delegate shall be selected, by the producers present, to attend a meeting of all the delegates elected within such district, at a time and place designated by the Control Committee. The chairman of the county meeting shall publicly announce at such meeting the total number of votes cast and the name of the person selected as delegate, and the chairman and secretary of such meeting shall forthwith transmit to the Control Committee, or such person as the Control Committee may designate, their certificate as to the number of votes so cast and announced and the name of the delegate selected. The Control Committee shall cause a meeting of the delegates selected in the counties of each district to be held within the respective districts, in the year 1936 within twenty-five (25) days after the effective date of this part and in ensuing years, not less than fifteen (15) days prior to the expiration of the terms of office of the members of the Control Committee and their alternates. At such district meeting the delegates present shall select a chairman and secretary and the nominees for their respective district representatives on the Control Committee. In the selection of nominees each delegate shall be entitled to cast one (1) vote for each producer voting at the meeting at which such delegate was selected. The chairman and secretary of each district meeting shall forthwith certify to the Control Committee, or such person as it may designate, the nominees selected at such district meeting, and the Control Committee, or such person as it may designate, shall forthwith certify such nominations to the Secretary.

(ii) Handler nominations. The Control Committee shall give notice to each person known to have handled watermelons during the preceding year, in the year 1936 within fifteen (15) days after the effective date of this part and in ensuing years, not less than twenty (20) days prior to the expiration of the terms of office of

the members of the Control Committee and their alternates, of the right of such person to participate in making nominations for members of the Control Committee and their alternates in each State where such person has handled watermelons during the preceding year. Such notice may be given by mail or by public notice in a newspaper of general circulation in each district or in a trade paper of general circulation in each district or in a trade paper of general circulation among handlers. The voting of handlers shall be by mail and such votes shall be received by the Control Committee not later than a date specified in said notice. Each such handler shall be entitled to cast one (1) vote for each handler nominee, as hereinabove provided, and in each State wherein he has handled watermelons during the preceding year. The Control Committee shall, at the specified time, immediately canvass the votes received and shall certify to the Secretary the names of the four (4) persons receiving the highest number of votes for nominees for members and alternates on the Control Committee of the handlers in Florida, North Carolina and South Carolina, respectively, and the names of the eight (8) persons receiving the highest number of votes for nominees as members and alternates on the Control Committee of the handlers in Georgia.

(iii) The secretary of the Sowega Melon Growers' Association shall certify to the Secretary the nominees of that association as determined by the directors thereof.

(5) Members of the Control Committee and their respective alternates, subsequent to those hereinabove designated and those selected in the year 1936, shall be selected annually for a term of one (1) year, beginning with the first Monday in April and shall serve until their respective successors shall be selected and shall be qualified. Any person selected as a successor of a member or alternate of the Control Committee shall qualify by filing a written acceptance of his appointment with the Secretary or his designated representative.

(6) An alternate for a member of the Control Committee shall act in the place and stead of such member in his absence or in the event of his removal, resignation or disqualification.

(7) In the event of the removal, resignation or disqualification of any member or his alternate, a successor for the unexpired term of such member or alternate may be selected by the Secretary.

(8) The members of the Control Committee and their alternates shall serve without compensation, but shall be allowed their necessary expenses.

(9) The members of the Control Committee shall select a chairman from their membership, and all communications from the Secretary to the committee may be addressed to the chairman at such address as may, from time to time, be filed with the Secretary. The committee shall select such other officers and adopt such rules for the conduct of its business as it may deem advisable. The committee shall give to the Secretary, or his designated agent or representative, the same notice of meetings of the Control Committee as is given to members of the committee.

(c) Powers and duties. The Control Committee shall have the following powers and duties:

- (1) To administer, as hereinafter specifically provided, the terms and provisions hereof;
- (2) To make, in accordance with the provisions hereinafter contained, administrative rules and regulations;
- (3) To receive, investigate and report to the Secretary, complaints of violations of this part; and
- (4) To recommend to the Secretary amendments to this part; and
- (5) To act as intermediary between the Secretary and any handler;
- (6) To keep minute books and records which will clearly reflect all of its acts and transactions, and such minute books and records shall, at any time, be subject to the examination of the Secretary;
- (7) To furnish the Secretary such available information as he may request;
- (8) To appoint such employees as it may deem necessary, and to determine the salaries and define the duties of such employees;
- (9) To perform such duties in connection with the administration of section 32 of the Act to amend the Agricultural Adjustment Act, and for other purposes (49 Stat. 774, 1151; 7 U.S.C., Sup., 612c), as amended, as may from time to time be assigned to it by the Secretary; and
- (10) To summon, when and if the Control Committee deems it advisable, the alternates to sit with the Control Committee in an advisory capacity.

(d) Procedure. All decisions of the Control Committee, except where otherwise specifically provided, shall be by a majority vote of the members who have qualified by filing their written acceptance and who are eligible to vote.

The Control Committee may provide for voting by mail or telegram upon due notice to all members eligible to vote on the proposition, and when any proposition is submitted for voting by such method, two (2) dissenting votes shall prevent its adoption until submitted to a meeting of the Control Committee.

The members of the Control Committee (including successors and alternates), and any agent or employee appointed or employed by the Control Committee, shall be subject to removal or suspension by the Secretary at any time. Each and every order, regulation, decision, determination or other act of the Control Committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time and upon his disapproval shall be deemed null and void, except as to acts done in reliance thereon or in compliance therewith.

(e) Funds. All funds received by the Control Committee pursuant to any provision of this part shall be used solely for the purpose herein specified and shall be accounted for in the following manner:

- (1) The Secretary may, at any time, require the Control Committee and its members to account for all receipts and disbursements.
- (2) Upon the removal or expiration of the term of office of any member of the Control Committee, such member shall account for all receipts and disbursements and deliver all property and funds in his

hands, together with all books and records in his possession, to his successor in office, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in such successor full title to all of the property, funds and/or claims vested in such member pursuant to this part.*† [Art. II]

908.4 Regulation of shipments—(a) Secretary may regulate. The Secretary may regulate the total quantity of watermelons or of any grade and/or of any size thereof (produced during the year in which such regulation may be in effect) which may be shipped from a point within the Southeastern States to any market outside of such States during any specified period by all handlers thereof by limiting the grade and/or size of such watermelons which may be shipped from points within the Southeastern States to points outside the Southeastern States, but any such limitation by grade shall be based upon the grades defined in the standards for watermelons of the United States Department of Agriculture; and/or Providing That, for specified periods, not exceeding forty-eight (48) hours in length, no such watermelons shall be shipped from points within the Southeastern States to any markets outside of said Southeastern States, but not less than five days shall elapse between any such specified periods.

(b) Recommendation by Control Committee. (1) The Control Committee, after consideration of

- (i) The current price received by producers;
- (ii) The total quantity of watermelons available for shipment during the proposed period of limitation;
- (iii) The proportion of various grades and sizes available during such period;
- (iv) The track holdings and unloads of watermelons in the terminal markets and the quantity in transit; and
- (v) The general market conditions prevailing as reflected in current prices, received at terminal markets, and other pertinent market factors; may make its recommendation to the Secretary for the establishment by the Secretary, for such period as may be deemed necessary, of the regulation, by either or both of the methods set out in paragraph (a) of this section, of the shipment of watermelons. Such recommendation shall be accompanied by such data as the Secretary may request.

(2) Only those members of the Control Committee who represent districts in which watermelons will be available and are intended to be shipped during the proposed limitation period, shall be qualified to vote on the recommendation of the proposed regulation of shipments. The Sowega Melon Growers' Association representative shall be qualified to vote when that association will have watermelons available, and which it intends to ship during the proposed limitation period. An affirmative vote of two-thirds (computed to the nearest number) of the Control Committee members qualified to vote thereon, shall be necessary for the adoption of the recommendation.

(c) Regulation issued by Secretary. Upon receipt of such recommendation, the Secretary shall determine whether the proposed regulation will tend to effectuate the purposes of this part, and, if he determines that the proposed regulation will have such effect, he may

*†For statutory and source citations, see note to § 908.1.

declare such regulation effective, for such period of time as he may fix, in conformity to the provisions of paragraph (a) of this section.

(d) **Compliance with regulation.** No handler shall ship any melons in violation of a regulation of shipments established as herein provided.

(e) **Notice.** The Control Committee shall give notice of any regulation of shipments established by the Secretary at least thirty (30) hours before the time such regulation becomes effective, by issuing a press release, posting a notice in the office of the Control Committee and/or by such other available means as the Control Committee deems necessary to give producers and handlers immediate information of such order.

(f) **Exemptions.** When the percentage of any producer's watermelons available and intended for shipment during any period when a limitation of shipments by grade and/or size is in effect, which may be shipped under such limitation, is below the average percentage of all producers' watermelons within the area covered by this part available and intended for shipment during such period and which may be shipped under such limitations, such producer may make application to the Control Committee for a certificate of exemption. Upon receipt of such application, the Control Committee shall cause an investigation to be made and shall report to the Secretary the results thereof and its recommendation as to the granting of an exemption and the extent thereof. If the Secretary, after such investigation as he deems necessary, determines that such producer is eligible for an exemption under the provisions of this paragraph, he may direct the Control Committee to issue its certificate authorizing the shipment or sale for shipment by such producer, of the quantity of watermelons, of grades and/or sizes barred from shipment by the shipment or sale for shipment by such producer, of the quantity aforesaid limitation, specified in such certificate, which quantity shall be such as to allow such producer to ship, or sell for shipment, no greater percentage of watermelons, produced by him, than the average percentage of watermelons which may be shipped under the aforesaid limitation. The certificate shall also state the period of time, as directed by the Secretary, during which such exemption shall be in effect. No handler shall ship such exempted watermelons without having first endorsed on such certificate the quantity of each grade and/or size of such watermelons shipped; the time of such endorsement, and by whom the endorsement is made. No handler shall make an endorsement on such certificate which will make the total quantity indicated by all endorsements thereon greater than the quantity exempted under such certificate and no handler shall make an endorsement on such certificate after the period of time for which such exemption is in effect.

(g) **Inspection and certification.** During any limitation period each handler of watermelons shipped from the Southeastern States shall cause to be filed with the Control Committee a Federal-State inspection certificate showing the grade and/or size of the watermelons contained in each shipment made by him, or a certificate made by an inspector accredited by the Control Committee, or a sub-committee thereof, showing the grade and/or size of the watermelons contained

in each shipment made by him. Inspectors in the employ of associations of producers or loading associations, as well as other inspectors who are properly qualified may be accredited by the Control Committee. Regulations governing the accrediting of inspectors shall from time to time be made by the Control Committee, subject to the approval of the Secretary.

(h) **Method of shipment.** No person shall ship watermelons in the name of another person without having first obtained the consent in writing, of such other person to so ship such melons.*† [Art. III]

908.5 Assessment and collection of expenses. (a) Each handler shall pay to the Control Committee such handler's pro rata share as is approved by the Secretary of the expenses in the amount of eighteen thousand five hundred dollars (\$18,500.00), (which amount the Secretary has found will necessarily be incurred by the Control Committee during the year ending March 31, 1937), or expenses in such other amount as the Secretary may later find will necessarily be incurred by the Control Committee during said year, for the maintenance and functioning of the Control Committee during said year as set forth in this part. The pro rata share of each handler shall be one dollar (\$1.00) for each carload, or its equivalent, handled by said handler, and said pro rata share shall be adjusted from time to time by the Control Committee, with the approval of the Secretary, in order to provide funds sufficient in amount to cover any finding by the Secretary of estimated expenses or the actual expenses of the control committee during said year.

Subsequent to March 31, 1937, each handler shall pay to the Control Committee such handler's pro rata share (as approved by the Secretary) of such expenses as the Secretary may find will necessarily be incurred by the Control Committee, during any period specified by the Secretary, for the maintenance and functioning of the Control Committee. The pro rata share of the expenses payable by a cooperative association of producers shall be computed on the basis of the quantity of watermelons covered by this part which is handled by such cooperative association of producers.

(b) The Control Committee shall, from time to time, transmit to the Secretary, for his consideration, a budget of the expenses which will necessarily be incurred by it, together with such data in reference thereto as the Secretary may direct.

(c) The Control Committee may, with the approval of the Secretary, maintain in its own name or in the names of its members a suit against any handler signatory hereto for the collection of such handler's pro rata share of expenses.*† [Art. IV]

908.6 Reports. Upon the request of the Control Committee, made with the approval of the Secretary, every handler shall furnish the Control Committee, in such manner and at such times as it prescribes, such information as it deems necessary to enable it to perform its powers and duties under this part.*† [Art. V]

908.7 Liability of Control Committee members. No member of the Control Committee, nor any employee thereof, shall be held liable individually, in any way whatsoever, to any party hereto or any other person for errors in judgment, mistakes or other acts, either

*†For statutory and source citations, see note to § 908.1.

of commission or omission as such member or employee except for acts of dishonesty.*† [Art. VI]

908.8 Separability. If any provision of this part is declared invalid, or the applicability thereof to any person, circumstance or thing is held invalid, the validity of the remainder of this part and/or the applicability thereof to any other person, circumstance or thing shall not be affected thereby.*† [Art. VII]

908.9 Derogation. Nothing contained in this part is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States, (a) to exercise any powers granted by the Act, or otherwise, and/or (b) in accordance with such powers to act in the premises whenever such action is deemed advisable.*† [Art. VIII]

908.10 Amendments. Amendments to this part may from time to time be proposed by the Control Committee.*† [Art. IX]

908.11 Duration of immunities. The benefits, privileges and immunities conferred by virtue of this part shall cease upon its termination, except with respect to acts done under and during the existence of this part.*† [Art. X]

908.12 Agents. The Secretary may, by designation in writing, name any person, including any officer or employee of the Government, or name any Bureau or Division in the Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this part.*† [Art. XI]

908.13 Effective time and termination. This part shall become effective at such time as the Secretary may declare above his signature attached hereto, and shall continue in force until terminated in one of the ways hereinafter specified.

The Secretary may at any time terminate this part by giving at least one day's notice by means of a press release or in any other manner which the Secretary may determine.

The Secretary shall terminate or suspend the operation of this part, or of any provision thereof, whenever he finds that said part, or such provision thereof, obstructs or does not tend to effectuate the declared policy of the Act.

The Secretary shall terminate this part at the end of any crop year whenever he finds that such termination is favored by a majority of the producers of watermelons who, during the preceding crop year, have been engaged in the production for market of watermelons in the Southeastern States, Provided, That such majority have, during such period, produced for market more than fifty percent of the volume of such watermelons produced for market, but such termination shall be effective only if announced on or before July 1.

This part shall in any event terminate whenever the provisions of the Act authorizing it cease to be in effect.*† [Art. XII, secs. 1, 2]

908.14 Proceedings after termination. Upon the termination of this part, the members of the Control Committee then functioning shall continue as joint trustees for the purpose of receiving and collecting all funds and property of the Control Committee, and all funds due or property to be delivered to the Control Committee; disposing

of all assets and property of said committee; satisfying or settling all indebtedness of the committee; and distributing any funds remaining in its hands, after the payment of its expenses, in such equitable manner as may be approved by the Secretary. Said trustees shall continue in such capacity until discharged by the Secretary; shall from time to time account for all receipts and disbursements and/or deliver all funds and property on hand, together with all books and records of the Control Committee and the joint trustees, to such person or persons as the Secretary shall direct; and shall, upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person or persons full title to all of the property, funds and/or claims vested in the Control Committee or the joint trustees, pursuant to this part. Each and every order, determination, decision or other act of such joint trustees shall be by a two-thirds vote thereof.

Any person to whom funds, property and/or claims have been delivered by the Control Committee or its members, upon direction of the Secretary as herein provided, shall be subject to the same obligations and duties with respect to said funds, property and/or claims as are hereinabove imposed upon the members of said committee or upon said joint trustees.*† [Art. XII, sec. 3]

PART 910—FRESH PEAS, CAULIFLOWER GROWN IN THE COUNTIES OF ALAMOSA, RIO GRANDE, CONEJOS, COSTILLA, CUSTER, AND EAGLE, COLORADO

| Sec. | Sec. |
|--|---|
| 910.1 Excerpt from findings. | (h) Allotments. |
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Section 910.1 Excerpt from findings. The Secretary of Agriculture, acting under the authority vested in him by section 8c of the

*†For statutory and source citations, see note to § 908.1.

Agricultural Adjustment Act (49 Stat. 753, 50 Stat. 246; 7 U.S.C., Sup., 608c), orders that the handling of peas and cauliflower grown in the counties of Alamosa, Rio Grande, Conejos, Costilla, Custer and Eagle in the State of Colorado, in the current of interstate or foreign commerce, or so as directly to burden, obstruct, or affect interstate or foreign commerce in such commodities, from and after August 9, 1936, shall be in conformity to and in compliance with the terms and conditions of this part.*† [Excerpt from findings]

* §§ 910.1 to 910.16, inclusive, issued under the authority contained in sec. 8c, 49 Stat. 753, 50 Stat. 246; 7 U.S.C., Sup., 608c.

†The source of §§ 910.1 to 910.16, inclusive, is Order 10, Department of Agriculture, Aug. 4, 1936, effective Aug. 9, 1936. (Order Ser., AAA)

910.2 Definitions. As used in this part:

(a) "Secretary" means the Secretary of Agriculture of the United States.

(b) "Act" means the Agricultural Adjustment Act, approved May 12, 1933 (48 Stat. 31; 7 U.S.C. Chapter 26), as amended.

(c) "Person" means individual, partnership, corporation, association, or any other business unit.

(d) "Peas" means all varieties of peas grown in the counties of Alamosa, Rio Grande, Conejos, Costilla, Custer, and Eagle in the State of Colorado, for sale for consumption in fresh form.

(e) "Cauliflower" means all varieties of cauliflower grown in the counties of Alamosa, Rio Grande, Conejos, Costilla, Custer and Eagle in the State of Colorado, for sale for consumption in fresh form.

(f) "To ship" means to convey or cause to be conveyed, by any means whatsoever, except as a common carrier for another person, in the current of interstate or foreign commerce, or so as to directly burden, obstruct or affect such commerce.

(g) "To handle" means to ship, or in any way deal in peas or cauliflower, whether as owner, agent, or otherwise, in the current of interstate or foreign commerce, or so as to directly burden, obstruct, or affect such commerce.

(h) "Handler" means and includes any person whether or not such person is also a grower, engaged wholly or in part in the business of handling peas or cauliflower.

(i) "Grower" means any person who grows peas or cauliflower for shipment in fresh form.

(j) "Control Committee" means the Control Committee established pursuant to § 910.3.

(k) "District" means a subdivision of the area covered by this part. The particular districts are delimited as follows:

The San Luis Valley District—consisting of the counties of Alamosa, Rio Grande, Conejos, and Costilla;

Wet Mountain Valley District—consisting of the county of Custer; and

Eagle Valley District—consisting of the county of Eagle.

*† [Art. I]

910.3 Control Committee—(a) Membership. A control committee is hereby established consisting of ten (10) members. The members and their respective alternates shall be as follows:

To represent handlers:

Elmer Hartner, Denver, as member; H. G. Armstrong, La Jara, as alternate;
Wm. L. Thompson, Fort Garland, as member; W. G. Erickson, Monte Vista,
as alternate; and

C. S. Birkins, Romeo, as member; C. E. Gylling, Alamosa, as alternate.

To represent pea growers:

G. C. Morris, La Jara, as member; James A. Reed, Alamosa, as alternate,
to represent the San Luis Valley District;

J. B. Gredig, Del Norte, as member; Frank Lohr, Del Norte, as alternate,
to represent the San Luis Valley District;

C. A. Kelso, Howard, as member; Wm. Hoge, Hillside, as alternate, to
represent the Wet Mountain Valley District; and

G. A. Smith, Avon, as member; W. A. Cole, Avon, as alternate, to represent
the Eagle Valley District.

To represent cauliflower growers:

J. J. Shecter, Alamosa, as member; Roy Y. Inouye, La Jara, as alternate;
Ira C. Francis, Jaroso, as member; F. E. Yoshida, La Jara, as alternate;
and

W. H. Lyckman, San Acacio, as member; James Sumida, Blanca, as alternate.

The members and alternates named in this paragraph shall hold
office for a term ending in July, 1938, and until their successors are
selected and shall qualify.

NOTE: Membership given as of June 1, 1938.

(b) Successor members. The successors to the above-named
members of the Control Committee and their respective alternates
shall be selected by the Secretary from nominations made by han-
dlers and from nominations made by growers as hereinafter pro-
vided. Two (2) persons shall be nominated for each member and
two (2) persons shall be nominated for the alternate of each such
member. From nominations made for each member and for each
alternate, the Secretary shall select a member and his alternate,
respectively.

Nominations for successors to the three (3) members and three (3)
alternates to represent handlers shall be by an election in which each
handler shall be entitled to participate and cast but one vote on
behalf of himself, agents, partners, affiliates, subsidiaries and repre-
sentatives, for each nominee to be selected. Nominations for suc-
cessors to the seven (7) members and the seven (7) alternates to
represent growers shall be made as follows: (1) for two (2) mem-
bers and their respective alternates, by the growers of peas in the
San Luis Valley District; (2) for one (1) member and his alternate,
by the growers of peas in the Wet Mountain Valley District; (3) for
one (1) member and his alternate, by the growers of peas in the
Eagle Valley District; and (4) for three (3) members and their
respective alternates, by the growers of cauliflower in the San Luis
Valley District. All such nominations for grower members and their
respective alternates shall be by a general election in each of the
districts, in which each grower entitled to participate may cast but
one vote on behalf of himself, agents, partners, affiliates, subsidiaries
and representatives for each nominee to be selected.

(c) Failure to select nominees. In the event nominations are
not made pursuant to paragraph (b) of this section by April 30 of
any year, the Secretary may select such member or alternate without
regard to nominations.

(d) Term of office. Members of the Control Committee and their respective alternates, subsequent to the members and alternates named in paragraph (a), shall be selected annually for a term of one year, beginning the first day of May, and shall serve until their respective successors shall be selected and shall qualify. Any person selected as a member or alternate of the Control Committee shall qualify by filing a written acceptance of his appointment with the Secretary or with his designated representative.

(e) Vacancies. To fill any vacancy occasioned by the death, removal, resignation or disqualification of any member of the Control Committee or any alternate, a successor for his unexpired term shall be selected in the manner indicated in paragraph (b) of this section, within twenty (20) days after such vacancy occurs. If a nomination to fill such vacancy is not made within twenty (20) days, the Secretary may select a member to fill such vacancy without regard to nominations.

(f) Organization. The Control Committee shall select such officers and adopt such rules for the conduct of its business as it may deem advisable. The Control Committee shall give the Secretary or his designated agent and representatives the same notice of meetings of the Committee as is given to members thereof.

(g) Inability of members to serve. An alternate for a member of the Control Committee shall act in the place and stead of such member in his absence, or in the event of his removal, resignation, disqualification, or death until a successor for his unexpired term has been selected.

(h) Powers and duties of Control Committee. The Control Committee shall have the following powers:

- (1) To administer, as hereinafter specifically provided, the terms and provisions of this part;
- (2) To make, in accordance with the provisions hereinafter contained, administrative rules and regulations;
- (3) To receive, investigate, and report to the Secretary of Agriculture complaints of violations of this part; and
- (4) To recommend to the Secretary of Agriculture amendments to this part; and
- (5) To act as intermediary between the Secretary and any grower or handler;
- (6) To keep minute books and records which will clearly reflect all of its acts and transactions, which minute books and records shall at any time be subject to the examination of the Secretary;
- (7) To furnish to the Secretary such available information as he may request;
- (8) To appoint such employees as it may deem necessary, and to determine the salaries and define the duties of any such employees;
- (9) To perform such duties in connection with the administration of section 32 of the Act to amend the Agricultural Adjustment Act, and for other purposes (49 Stat. 774, 1151; 7 U.S.C., Sup., 612c), as amended, as may from time to time be assigned to it by the Secretary; and

(10) To confer with representatives of handlers or growers of peas or cauliflower grown in other areas with respect to the formulation or operation of marketing agreements providing for the regulation of shipments among the several areas where peas or cauliflower are grown.

(i) **Voting procedure and funds.** Any decision of the Control Committee, with respect to peas, shall be by a majority vote of the members representing handlers and members representing pea growers, and with respect to cauliflower, by a majority vote of the members representing handlers and members representing cauliflower growers. Any decision with respect to both peas and cauliflower shall be by a majority vote of its entire membership. The provisions of this paragraph shall not affect or supersede any other provision of this part requiring a minimum vote with respect to specified action to be taken by the Control Committee. The Control Committee may provide for voting by mail or telegraph, or by telephone, if such vote by telephone is immediately confirmed by a telegram or in writing. The members of the Control Committee and any agent or employee appointed or employed by such committee shall be subject to removal or suspension by the Secretary at any time. Each action of the Control Committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time and upon such disapproval shall be null and void except as to acts done in reliance thereon or in compliance therewith.

All funds received by the Control Committee pursuant to any provision of this part shall be used solely for the purposes herein specified and shall be accounted for in the following manner: The Secretary may require the Control Committee and its members to account for all receipts and disbursements; and upon the death, resignation, removal or expiration of the term of office of any member of the Control Committee, all books, records, funds and other property in his possession shall be delivered to the Control Committee or to his successor in office, and such assignments and other instruments shall be executed as may be necessary to vest in the Control Committee or his successor full title to all the books, records, funds and other property in his possession or under his control.

(j) **Expenses of Control Committee members.** Members of the Control Committee shall serve without compensation but shall be entitled to expenses necessarily incurred in the performance of their duties hereunder.*† [Art. II]

910.4 Regulation of railroad shipments—(a) Recommendation of the Control Committee. When the Control Committee deems it advisable that daily railroad shipments of peas or cauliflower be regulated during any specified period, it may recommend to the Secretary the establishment of such a regulation. In making such recommendation it shall give consideration to the supply of and demand for peas or cauliflower to be regulated. With its recommendation, the Control Committee shall forward an estimate of the daily shipments during the contemplated regulation period, if no regulation were in effect, the quantity deemed advisable to be shipped daily, and other information which it considered in making such recommendation.

*†For statutory and source citations, see note to § 910.1.

The Control Committee shall, immediately follow such recommendation, advise all handlers of the recommended regulation period and the contemplated commencement thereof, and shall instruct them to make reports as required pursuant to paragraph (c) of this section.

(b) **Establishment of regulation periods.** Based upon the recommendation of the Control Committee, and information furnished by it, or upon any other information, the Secretary may regulate the daily railroad shipments of peas or cauliflower for a specified period in the manner hereinafter prescribed. Notice of the establishment of such a regulation period, the dates of the commencement and termination thereof, and the daily advisable shipments determined pursuant to paragraph (f) of this section, shall be given by the Secretary to the Control Committee by telegraph or in any other manner which he deems sufficient.

(c) **Reports from handlers.** Each handler desiring to ship peas or cauliflower on any day during the regulation period, shall report to the Control Committee on the day prior to any such day the quantity of peas or cauliflower loaded in cars that day, and the quantity of peas or cauliflower loaded in cars which remained unshipped the previous day.

(d) **Revision of reports.** The Control Committee may check the accuracy of any report filed pursuant to this section and verify the same in such manner as it may determine and on the basis of its findings may revise any such report.

(e) **Available for shipment.** After such reports have been verified or revised the Control Committee shall determine for each and all handlers the quantity of peas or cauliflower available for shipment on the day prior to each day for which shipments are to be regulated. The quantity of peas or cauliflower "available for shipment" for a particular day shall equal the verified or corrected quantity loaded in cars that day, plus the verified or corrected quantity loaded in cars which remained unshipped the previous day, plus any overshipments (not considered a violation of this part) and less any undershipments relative to the allotment for such previous day.

(f) **Advisable for shipment.** From information furnished by the Control Committee or from other information, the Secretary shall determine the quantity of peas or cauliflower which is deemed advisable to be shipped daily during such regulation period.

(g) **Allotment percentage.** The allotment percentage for any day during such regulation period shall be the result obtained by dividing the quantity which is deemed advisable to be shipped on that day by the total quantity available for shipment by all handlers the day prior thereto; Provided, however, That the allotment percentage for any Monday shall be the result obtained by dividing the quantity which is deemed advisable to be shipped that day by the total quantity which was available for shipment by all handlers the previous Saturday.

(h) **Allotments.** The allotment for each handler on any day shall be the product of the quantity he had available for shipment on the day prior thereto, and the allotment percentage for that day, deter-

mined pursuant to paragraph (g) of this section: Provided, however, That the quantity such handler had available for shipment on the previous Saturday shall be used in determining his allotment for any Monday. No handler shall ship in excess of his allotment, except as otherwise provided herein. Shipment of less than one car over his allotment by any handler shall not be a violation of this part, if such handler advises the Control Committee of such overshipment within twenty-four (24) hours. Such handler's allotment for the next day shall be reduced by the amount of such overshipment. If any handler ships less than his allotment for any day, his allotment for the day next succeeding his report of the same to the Control Committee shall be increased by the amount of such undershipment.

(i) **Control Committee's report to handlers.** The Control Committee using the formula herein set forth, shall calculate, by noon of each day during a regulation period, the amount of each handler's daily allotment and advise him thereof, together with the total quantity available for shipment by all handlers the day prior thereto.

(j) **Transfer of allotments.** Any handler may transfer his allotment in whole or in part, Provided That such transfer is immediately reported to the Control Committee. The amount of such transfer shall be deducted from the allotment of the transferor and added to the allotment of the transferee.

(k) **Modification of daily shipments.** If the Control Committee determines that the quantity which is deemed advisable for shipment daily during any regulation period, determined pursuant to paragraph (f) of this section, be changed by reason of changes in supply and demand conditions, it shall so recommend to the Secretary. Based upon such recommendation or other information, the Secretary may modify his prior determination of the quantity which is deemed advisable for shipment daily. The Secretary shall notify the Control Committee of such change. Based upon the recommendation of the Control Committee or other information, the Secretary may terminate any regulation period by giving twelve hours' notice thereof to the Control Committee.

(l) **Equitable shipments.** During any regulation period established pursuant to this section, each handler shall ship peas or cauliflower for growers in an equitable manner so as to assure each grower equal opportunity to have his peas or cauliflower marketed.

(m) **Prohibition of loading.** When the Control Committee finds that the total quantity which will be available for shipment the following day will exceed three (3) times the quantity advisable for shipment such following day, it may recommend to the Secretary that handlers be prohibited from loading peas or cauliflower for shipment in interstate or foreign commerce, or so as to directly burden, obstruct, or affect such commerce, during a period not to exceed forty-eight (48) hours. Any such recommendation with respect to peas shall be by the affirmative vote of at least five (5) of the handler members and members representing growers of peas. The Control Committee shall immediately give notice to the handlers of such recommendation and of the contemplated commencement

of such period. Based upon such recommendation or upon any other information, the Secretary may prohibit the loading of peas or cauliflower for shipment in interstate or foreign commerce, or so as to directly burden, obstruct, or affect such commerce, for a period not to exceed forty-eight (48) hours: Provided, however, That there shall elapse not less than three (3) days between the last day of one period and the first day of the next succeeding period.*† [Art. III]

910.5 Regulation by grades and sizes—(a) Recommendation of the Control Committee. Whenever the Control Committee deems it advisable to regulate the shipment of any grade or size of peas or cauliflower produced in a specified period, it may so recommend to the Secretary. The Control Committee shall furnish the Secretary all pertinent data and information upon which it acted in making such recommendations, which shall include factors affecting the supply of and demand for peas or cauliflower by grades or sizes thereof.

(b) Regulation of shipments. Based upon such recommendation and information furnished by the Control Committee, or upon other information, the Secretary may regulate the quantity of any grade or size of peas or cauliflower produced in a specified period, which may be shipped during any period. Such regulation of shipments may be accomplished by prohibiting the shipment of certain grades or sizes of peas or cauliflower during such period, or by prohibiting the shipment of a part of any grade or size of peas or cauliflower.

When the Secretary determines to regulate shipments as provided herein, he shall immediately notify the Control Committee of such determination and the date of the commencement of such regulation period by telegraph or by any other means which he deems advisable. The Control Committee shall immediately give notice to handlers of the institution of such regulation period, and the grades or sizes or the portions thereof, which are prohibited from shipment.

(c) Exemptions. (1) In the event a regulation period is established on peas or cauliflower pursuant to this section, the Control Committee shall determine the percentage which the grades and sizes of the crop permitted to be shipped is of the total crop which could be shipped in the absence of regulation under this section. The Control Committee shall forthwith announce this percentage and the procedure by which exemption certificates will be issued to growers pursuant to this paragraph.

(2) If any grower of peas or cauliflower shall show to the Control Committee that the regulation of shipments will allow him to ship during the period a percentage of his crop less than the percentage found in accordance with subparagraph (1) of this paragraph, the Control Committee shall issue to him an exemption certificate allowing the shipment of such a quantity of the limited grade or size as will make the percentage of his crop that may be shipped equal to the percentage found in accordance with subparagraph (1) of this paragraph.

(3) If any grower is dissatisfied with the determination by the Control Committee with respect to such exemption certificate, he may appeal to the Secretary.

(d) Charitable purposes. The provisions of this part with respect to regulation of shipments and to assessments shall not apply to peas or cauliflower shipped for charitable purposes.*† [Art. IV]

910.6 Grading and inspection. All shipments of peas or cauliflower shall be graded and certified on the basis of the grades now promulgated by the United States Department of Agriculture, or as the same may be modified or changed hereafter.

Each handler shall utilize the standard Federal-State inspection service and pay the cost of same. Each shipment, in whatever quantity, shall be accompanied by a standard inspection certificate or official memorandum thereof indicating its conformity to the said grades.*† [Art. V]

CROSS REFERENCE: For regulations under the Farm Products Inspection Act pertaining to the inspection and certification service for fruits, vegetables, and other products, see Part 51.

910.7 Expenses and assessments. The Control Committee is authorized to incur such expenses as the Secretary finds may be necessary to carry out its functions under this part. The funds to cover such expenses shall be acquired by the levying of assessments as hereinafter provided.

Each handler shall pay to the Control Committee upon demand his pro rata share, as is approved by the Secretary, of the expenses in the amount of four thousand dollars (\$4,000) or expenses in such other amount as the Secretary may later find will necessarily be incurred by said committee, during the marketing season, May 1, 1936, to April 30, 1937, for the maintenance and functioning of said committee, during said season, as set forth in this part. Each handler's share of such expenses shall be that proportion thereof which the total quantity of peas or cauliflower shipped by such handler during said season is of the total quantity of peas or cauliflower shipped by all handlers during said season. The initial assessment of each handler shall be one-half cent per bushel hamper, or its equivalent, for peas, and one-half cent per crate (8½ inches by 18 inches by 23¼ inches), or its equivalent, for cauliflower, shipped by such handler, and said assessment shall be adjusted, from time to time, by the Control Committee, with the approval of the Secretary, in order to provide funds sufficient in amount to cover any later finding by the Secretary of estimated expenses or the actual expenses of the Control Committee during said season. The assessments of each handler for any season shall be due at such time and shall be payable in such installments, if any, as the Control Committee shall determine.

For seasons subsequent to the season of 1936, each handler shall pay to the Control Committee upon demand such handler's pro rata share, as is approved by the Secretary, of such expenses as the Secretary may find will necessarily be incurred by the Control Committee for the maintenance and functioning of the said committee as set forth in this part.

In order to provide funds to carry out the functions of the said committee prior to the commencement of shipments in any season, handlers may make advance payments of assessments, which advance

*†For statutory and source citations, see note to § 910.1.

payments shall be credited to such handlers, and the assessments of such handlers shall be adjusted so that such assessments are based upon the quantity of peas or cauliflower shipped by such handlers during such season.

On or before the end of each calendar year, the Control Committee shall credit each contributing handler with the excess of the amount paid by such handler above his pro rata share of the expenses, or debit such handler with the difference between his pro rata share and the amount paid by such handler. Any such debits shall become due and payable upon the demand of the Control Committee.

From funds acquired pursuant to this section the Control Committee shall pay the salaries of the employees of the Control Committee, if any, and the expenses necessarily incurred in the maintenance and functioning of said Committee in the performance of its duties under this part.*† [Art. VI]

910.8 Reports. Upon the request of the Control Committee, in accordance with forms of reports approved by the Secretary, each handler shall furnish the Control Committee, in such manner and at such times as it prescribes, such information as will enable it to perform its duties under this part.*† [Art. VII]

910.9 Liability of Control Committee members. No member of the Control Committee nor any employee thereof shall be held responsible individually in any way whatsoever to any handler or any other persons for errors in judgment, mistakes, or other acts, either of commission or omission, as such member or employee, except for acts of dishonesty.*† [Art. VIII]

910.10 Separability. If any provision of this part is declared invalid or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this part or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.*† [Art. IX]

910.11 Derogation. Nothing contained in this part is or shall be construed to be in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the Act or otherwise, or in accordance with such powers to act in the premises whenever such action is deemed advisable.*† [Art. X]

910.12 Amendments. Amendments to this part may from time to time be proposed by the Control Committee.*† [Art. XI]

910.13 Duration of immunities. The benefits, privileges, and immunities conferred by virtue of this part shall cease upon its termination except with respect to acts done under and during the existence of this part, and benefits, privileges, and immunities conferred by this part upon any person shall cease upon its termination as to such person except with respect to acts done under and during the existence of this part.*† [Art. XII]

910.14 Agents. The Secretary may by a designation in writing name any person, including any officer or employee of the Government, or any Bureau or Division in the Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this part.*† [Art. XIII]

910.15 Effective time and termination. This part shall become effective at such time as the Secretary may declare above his signature attached hereto, and shall continue in force until terminated in one of the ways hereinafter specified.

The Secretary shall terminate or suspend the operation of this part, or of any provision thereof, whenever he finds that said part, or such provision thereof, obstructs or does not tend to effectuate the declared policy of the Act.

The Secretary shall terminate this part with respect to peas or cauliflower, at the end of any marketing season whenever he finds that such termination is favored by a majority of the growers of peas or cauliflower respectively, who during such marketing season, have been engaged in the production for market of peas or cauliflower in the area covered by this part: Provided, That such majority have during such season produced more than fifty (50) percent of the volume of such peas or cauliflower produced within the area, but such termination shall be effective only if notice thereof is given on or before April 30 of such marketing season. As used in this section, "marketing season" means the twelve (12) months' period between May 1 of any year and April 30 of the next succeeding year.

This part shall in any event terminate whenever the provisions of the Act authorizing it cease to be in effect.*† [Art. XIV, secs. 1, 2]

910.16 Proceedings after termination. Upon the termination of this part, the members of the Control Committee then functioning shall continue as joint trustees of all funds and property then in the possession or under the control of the Control Committee, including claims for any funds unpaid or property not delivered at the time of such termination, for the purpose of liquidating all matters with respect to this part. Said trustees shall continue in such capacity until discharged by the Secretary; shall from time to time account for all receipts and disbursements and deliver all funds and property on hand, together with all books and records of the Control Committee and the joint trustees, to such person as the Secretary shall direct; shall, upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title to all of the funds and claims vested in the Control Committee or the joint trustees pursuant to this part; and shall refund to each contributing handler the excess of the amount paid by such handler above his pro rata share of expenses, or debit each handler with the difference between his pro rata share and the amount paid by any such handler, if such amount is less than his pro rata share, any such debit shall become due and payable upon the demand of the said trustees. Nothing stated herein shall be deemed to preclude the bringing of a suit for assessments levied by the Control Committee at any time prior to the termination of this part.

Any person to whom funds, property, or claims have been delivered by the Control Committee or its members upon direction of the Secretary, as herein provided, shall be subject to the same obligations and duties with respect to said funds, property, or claims as are hereinabove imposed upon the members of said committee or upon said joint trustees.*† [Art. XIV, sec. 3]

*†For statutory and source citations, see note to § 910.1.

PART 912—MILK IN DUBUQUE, IOWA, MARKETING AREA

| Sec. | Sec. |
|---------------------------------------|---|
| 912.1 Excerpt from findings. | 912.7 Milk purchased from producers. |
| 912.2 Definitions. | 912.8 Determination of uniform prices to producers. |
| 912.3 Market Administrator. | (a) Computation of value of milk for each handler. |
| (a) Selection, removal, and bond. | (b) Computation and announcement of uniform prices. |
| (b) Compensation. | 912.9 Payment for milk. |
| (c) Powers and duties. | (a) Time and method of payment. |
| (d) Responsibility. | (b) Errors in payments. |
| 912.4 Classification of milk. | (c) Butterfat differential. |
| (a) Sales and use classification. | 912.10 Expense of administration. |
| (b) Interhandler sales. | (a) Payments by handlers. |
| (c) Sales to nonhandlers. | (b) Suits by Market Administrator. |
| 912.5 Minimum prices. | 912.11 Effective time, suspension, and termination. |
| (a) Class I price. | 912.12 Continuing power and duty. |
| (b) Class II price. | 912.13 Liquidation after suspension or termination. |
| (c) Class III price. | 912.14 Liability. |
| (d) Sales outside the marketing area. | |
| 912.6 Reports of handlers. | |
| (a) Periodic reports. | |
| (b) Reports as to producers. | |
| (c) Reports of payments to producers. | |
| (d) Verification of reports. | |

Section 912.1 Excerpt from findings. The Secretary of Agriculture, pursuant to the authority vested in him by section 8c of the Agricultural Adjustment Act (49 Stat. 753, 50 Stat. 246; 7 U.S.C., Sup., 608c), hereby orders that such handling of milk in the Dubuque, Iowa, marketing area, as is in the current of interstate or foreign commerce, or which directly burdens, obstructs, or affects interstate or foreign commerce shall, from October 1, 1936, be in conformity to, and in compliance with, the following terms and conditions.*†

[Excerpt from findings]

* §§ 912.1 to 912.14, inclusive, issued under the authority contained in sec. 8c, 49 Stat. 753, 50 Stat. 246; 7 U.S.C., Sup., 608c.

†The source of §§ 912.1 to 912.14, inclusive, (except for the amendment noted in the text,) is Order 12, Department of Agriculture, Sept. 17, 1936, effective Oct. 1, 1936. (Order Ser., AAA)

912.2 Definitions. (a) “Dubuque marketing area,” hereinafter called the “marketing area”, means the territory within the corporate limits of the city of Dubuque; the territory within the township of Dubuque; sections 1, 2, 3, 11, and 12 of the township of Table Mound, and sections 5 and 6 of the township of Mosalem, all in the county of Dubuque, in the State of Iowa.

(b) “Person” means any individual, partnership, corporation, association, and any other business unit.

(c) “Producer” means any person, irrespective of whether any such person is also a handler, who produces milk in conformity with the health requirements applicable for milk to be sold for consumption as milk in the marketing area.

(d) “Handler” means any person, irrespective of whether such person is a producer or an association of producers, wherever located

or operating, who engages in such handling of milk, which is sold as milk or cream in the marketing area, as is in the current of interstate or foreign commerce or which directly burdens, obstructs, or affects interstate or foreign commerce in milk and its products.

(e) "Market Administrator" means the person designated pursuant to § 912.3 as the agency for the administration hereof.

(f) "Delivery period" means the current marketing period beginning with the 1st day and ending with the 15th day, and beginning with the 16th day and ending with the last day, of each month.*† [Art. I]

912.3 Market Administrator—(a) Selection, removal, and bond. The Market Administrator shall be selected by the Secretary and shall be subject to removal by him at any time. The Market Administrator shall, within 45 days following the date upon which he enters upon his duties, execute and deliver to the Secretary a bond, conditioned upon the faithful performance of his duties, in an amount and with surety thereon satisfactory to the Secretary.

(b) **Compensation.** The Market Administrator shall be entitled to such reasonable compensation as may be determined by the Secretary.

(c) **Powers and duties.** (1) The Market Administrator shall have power:

(i) To administer the terms and provisions hereof; and

(ii) To receive, investigate, and report to the Secretary complaints of violation of the terms and provisions hereof.

(2) The Market Administrator, in addition to the duties herein-after described, shall:

(i) Keep such books and records as will clearly reflect the transactions provided for herein;

(ii) Submit his books and records to examination by the Secretary at any and all times;

(iii) Furnish such information and such verified reports as the Secretary may request;

(iv) Obtain a bond with reasonable security thereon covering each employee who handles funds entrusted to the Market Administrator;

(v) Employ and fix the compensation of such persons as may be necessary to enable him to administer the terms and provisions hereof;

(vi) Publicly disclose to handlers and producers, unless otherwise directed by the Secretary, the name of any person who, within 15 days after the date upon which he is required to perform such acts, has not (a) made reports pursuant to § 912.6 or (b) made payments pursuant to § 912.9;

(vii) Pay out of the funds provided by § 912.10 the cost of his bond and of the bonds of such of his employees as handle funds entrusted to the Market Administrator, his own compensation, and all other expenses which will necessarily be incurred by him for the maintenance and functioning of his office and the performance of his duties.

(d) **Responsibility.** The Market Administrator, in his capacity as such, shall not be held responsible in any way whatsoever to any

*†For statutory and source citations, see note to § 912.1.

handler or any other person for errors in judgment, for mistakes, or for other acts either of commission or omission, except for his own wilful misfeasance, malfeasance, or dishonesty.*† [Art. II]

912.4 Classification of milk—(a) Sales and use classification. All milk purchased or handled by handlers shall be classified by the Market Administrator as follows:

- (1) All milk sold or distributed as milk shall be class I milk;
- (2) All milk used to produce cream for consumption as cream shall be class II milk;
- (3) All milk specifically accounted for (i) as sold, distributed, or disposed of other than as milk, or cream for consumption as cream, (ii) as manufacturing loss, and (iii) as general plant shrinkage within reasonable limits shall be class III milk.

(b) Interhandler sales. Milk sold by a handler to another handler shall be presumed to be class I milk. In the event that such selling handler, on or before the date fixed for filing reports pursuant to § 912.6, notifies the Market Administrator that such milk, or part thereof has been sold or used by the purchasing handler other than as class I milk, such milk, or part thereof, shall be classified according to such notification; provided, that if such selling handler does not, on or before the 10th day after the end of the delivery period during which such sale was made, furnish proof satisfactory to the Market Administrator in support of the above notification, such milk, or part thereof, shall then be classified as class I milk and so included in the value of milk computed for the selling handler pursuant to § 912.8 (a).

(c) Sales to nonhandlers. Milk sold by a handler to a person who is not a handler and who distributes milk or manufactures milk products shall be presumed to be class I milk. In the event that such selling handler, on or before the date fixed for filing reports pursuant to § 912.6, notifies the Market Administrator that such milk, or part thereof, has been sold by such purchaser other than as milk, such milk, or part thereof, shall be classified according to such notification; Provided, That if such selling handler does not, on or before the 15th day after the end of the delivery period during which such sale was made, furnish proof satisfactory to the Market Administrator in support of the above notification, such milk, or part thereof, shall then be classified as class I milk and so included in the value of milk computed for the selling handler pursuant to § 912.8 (a).*† [Art. III]

912.5 Minimum prices—(a) Class I price. Each handler shall pay producers, at the time and in the manner set forth in § 912.9, for class I milk, at such handler's plant, not less than \$2.30 per hundredweight.

(b) Class II price. Each handler shall pay producers, at the time and in the manner set forth in § 912.9, for class II milk, at such handler's plant, not less than \$1.80 per hundredweight.

(c) Class III price. Each handler shall pay producers, in the manner set forth in § 912.9, for class III milk not less than the price which shall be calculated by the Market Administrator as follows:

Multiply by 3.5 the average price per pound of 92-score butter at wholesale in the Chicago market, as reported by the United States Department of Agriculture, for the delivery period during which such milk is purchased, and add 15 cents.

(d) Sales outside the marketing area. The price to be paid to producers by a handler for class I milk sold outside the marketing area, in lieu of the price otherwise applicable pursuant to this section, shall be such price as the Market Administrator ascertains is being paid by processors, in the market where such milk is sold, for milk of equivalent use, subject to a reasonable adjustment on account of transportation from the plant where such milk is received from producers to the plant where such milk is loaded on wholesale and retail routes.* [Art. IV, order 12, Sept. 17, 1936, as amended Feb. 24, 1937]

912.6 Reports of handlers—(a) Periodic reports. On or before the 5th day after the end of each delivery period each handler shall, with respect to milk or cream which was, during such delivery period (1) received from producers, (2) received from handlers, and (3) produced by such handler, report to the Market Administrator, in the detail and form prescribed by him, as follows:

- (i) The receipts at each plant from producers who are not handlers;
- (ii) The receipts at each plant from any other handler, including any handler who is also a producer;
- (iii) The quantity, if any, produced by such handler; and
- (iv) The respective quantities of milk which were sold, distributed, or used, including sales to other handlers, for the purpose of classification pursuant to § 912.4.

(b) Reports as to producers. Each handler shall report to the Market Administrator within 10 days after the Market Administrator's request, with respect to any producer for whom such information is not in the files of the Market Administrator, and with respect to a period or periods of time designated by the Market Administrator, (1) the name and address, (2) the total pounds of milk delivered, (3) the average butterfat test of milk delivered, and (4) the number of days upon which deliveries were made; and as soon as possible after first receiving milk from any producer, (i) the name and address of such producer, (ii) the date upon which such milk was first received, and (iii) the plant at which such producer delivered milk.

(c) Reports of payments to producers. Each handler shall submit to the Market Administrator on or before the 20th day after the end of each delivery period his producer payroll for such delivery period which shall show for each producer (1) the net amount of such producer's payment with the prices, deductions, and charges involved and (2) the total delivery of milk with the average butterfat test thereof.

(d) Verification of reports. In order that the Market Administrator may submit verified reports to the Secretary pursuant to § 912.3 (c), each handler shall permit the Market Administrator or his agent, during the usual hours of business, to (1) verify the infor-

*For statutory citation, see note to § 912.1.

mation contained in reports submitted in accordance with this section, and (2) weigh milk delivered by each producer and sample and test milk for butterfat.*† [Art. V]

912.7 Milk purchased from producers. In the case of a handler who is also a producer, and has purchased milk from producers, the Market Administrator shall, in the computations set forth in § 912.8, first exclude the milk purchased by him in each class from other handlers and then apportion the milk purchased by him from producers to each class according to the ratio which such handler's remaining total sales in each class bears to his remaining total sales in all classes.*† [Art. VI]

912.8 Determination of uniform prices to producers—(a) Computation of value of milk for each handler. For each delivery period the Market Administrator shall compute, subject to the provisions of § 912.7, the value of milk sold or used by each handler, which was not purchased from other handlers, by (1) multiplying the quantity of such milk in each class by the price applicable pursuant to § 912.5, and (2) adding together the resulting values of each class.

(b) Computation and announcement of uniform prices. The Market Administrator shall compute and announce for each handler the uniform price per hundredweight of milk delivered to such handler during each delivery period as follows:

(1) Divide the total value computed pursuant to paragraph (a) of this section by the total quantity of milk for which such value is computed;

(2) On or before the 10th day after the end of each delivery period, notify each handler of the blended price per hundredweight computed for him pursuant to this paragraph; and

(3) On or after the 15th day after the end of each delivery period publicly announce the uniform price computed for each handler pursuant to this paragraph.*† [Art. VII]

912.9 Payment for milk—(a) Time and method of payment. On or before the 15th day after the end of each delivery period each handler shall make payment for the total value of milk received from producers during such delivery period, computed according to § 912.8 (a) by paying each producer for all milk delivered by such producer at the blended price computed for such handler pursuant to § 912.8 (b), subject to the butterfat differential set forth in paragraph (c) of this section.

(b) Errors in payments. Errors in making the payments prescribed in this section shall be corrected not later than the date for making payments next following the determination of such errors.

(c) Butterfat differential. In making payments to each producer pursuant to paragraph (a) of this section, each handler shall add or subtract, as the case may be, for each one-tenth of one percent of butterfat content of milk delivered by such producer which is above or below 3.5 percent, an amount which is one-tenth of the average price per pound of 92-score butter at wholesale in the Chicago market as reported by the United States Department of Agriculture for the delivery period during which such milk is purchased;

provided that such amount shall not be less than 3 cents nor more than 4 cents.*† [Art. VIII]

912.10 Expense of administration—(a) Payments by handlers. As his pro rata share of the expense of the administration hereof, each handler shall, on or before the 10th day after the end of each delivery period, pay to the Market Administrator a sum not exceeding 4 cents per hundredweight with respect to all milk received by him during such delivery period from producers or produced by him, the exact amount to be determined by the Market Administrator subject to review by the Secretary.

(b) Suits by Market Administrator. The Market Administrator may maintain a suit in his own name against any handler for the collection of such handler's pro rata share of expense set forth in this section.*† [Art. IX]

912.11 Effective time, suspension, and termination. The provisions hereof, or any amendment hereto, shall become effective at such time as the Secretary may declare, and shall continue in force until suspended or terminated, pursuant to this section. Any or all provisions hereof or any amendment hereto shall be suspended or terminated as to any or all handlers after such reasonable notice as the Secretary may give, and shall, in any event, terminate whenever the provisions of the Act authorizing it cease to be in effect. Unless otherwise provided by the Secretary in the notice of amendment, suspension, or termination of any or all provisions hereof, the amendment, suspension, or termination shall not: (a) affect, waive, or terminate any right, duty, obligation, or liability which shall have arisen or may thereafter arise in connection with any provisions hereof; (b) release or waive any violation hereof occurring prior to the effective date of such amendment, suspension, or termination; or (c) affect, or impair, any rights or remedies of the Secretary, or of any other person, with respect to any such violation.*† [Art. X, secs. 1, 2, 3]

912.12 Continuing power and duty. If, upon the suspension or termination of any or all provisions hereof, there are any obligations arising hereunder, the final accrual or ascertainment of which requires further acts by any handler, by the Market Administrator, or by any other person, the power and duty to perform such further acts shall continue notwithstanding such suspension or termination; Provided, That any such acts required to be performed by the Market Administrator shall, if the Secretary so directs, be performed by such other person, persons, or agency as the Secretary may designate.

The Market Administrator, or such other person as the Secretary may designate, (a) shall continue in such capacity until discharged by the Secretary, (b) from time to time account for all receipts and disbursements and deliver all funds or property on hand, together with the books and records of the Market Administrator, or such person, to such person as the Secretary shall direct, and (c) if so directed by the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title to all funds, property, and claims vested in the Market Administrator or such person pursuant hereto.*† [Art. X, sec. 4]

*†For statutory and source citations, see note to § 912.1.

912.13 Liquidation after suspension or termination. Upon the suspension or termination of this part the Market Administrator, or such person as the Secretary may designate, shall liquidate the business of the Market Administrator's office, and dispose of all funds and property then in his possession or under his control, together with the claims for any funds which are unpaid and owing at the time of such suspension or termination. Any funds collected pursuant to the provisions hereof over and above the amounts necessary to meet outstanding obligations and the expenses necessarily incurred by the Market Administrator or such person in liquidating and distributing such funds, shall be distributed to the contributing handlers and producers in an equitable manner.*† [Art. X, sec. 5]

912.14 Liability. The liability of the handlers hereunder is several and not joint and no handler shall be liable for the default of any other handler.*† [Art. XI]

PART 913—MILK IN KANSAS CITY, MISSOURI, MARKETING AREA

| Sec. | | Sec. |
|-------|--|---|
| 913.1 | Excerpt from findings. | (b) Computation and announcement of uniform prices. |
| 913.2 | Definitions. | (c) Proration of cash balance. |
| 913.3 | Market Administrator. | (d) Base rating. |
| | (a) Selection, removal, and bond. | (e) Determination for base rating. |
| | (b) Compensation. | |
| | (c) Powers. | |
| | (d) Responsibility. | 913.9 Payments for milk. |
| 913.4 | Classification of milk. | (a) Time and method of payment. |
| | (a) Sales and use classification. | (b) Half-delivery period payments. |
| | (b) Interhandler sales. | (c) Errors in payments. |
| | (c) Sales to nonhandlers. | (d) Butterfat differential. |
| 913.5 | Minimum prices. | (e) Country station differentials. |
| | (a) Class I price. | |
| | (b) Class II price. | 913.10 Marketing services. |
| | (c) Class III price. | (a) Deductions for marketing services. |
| | (d) Sales outside the marketing area. | (b) Producers' cooperative associations. |
| 913.6 | Reports of handlers. | 913.11 Expenses of administration. |
| | (a) Periodic reports. | (a) Payments by handlers. |
| | (b) Reports as to producers. | (b) Suits by Market Administrator. |
| | (c) Reports of payments to producers. | 913.12 Effective time, suspension, and termination. |
| | (d) Verification of reports. | 913.13 Continuing power and duty. |
| 913.7 | Handlers who are also producers. | 913.14 Liquidation after suspension or termination. |
| | (a) Reports. | |
| | (b) Milk purchased from producers. | 913.15 Liability. |
| | (c) Milk sold to other handlers. | |
| 913.8 | Determination of uniform prices to producers. | |
| | (a) Computation of value of milk for each handler. | |

Section 913.1 Excerpt from findings. The Secretary, pursuant to the authority vested in him by section 8c of the Agricultural Adjustment Act (49 Stat. 753, 50 Stat. 246; 7 U.S.C., Sup., 608c), hereby orders that such handling of milk in the Kansas City, Missouri,

marketing area, as is in the current of interstate or foreign commerce, or which directly burdens, obstructs, or affects interstate or foreign commerce, shall, from December 1, 1936, be in conformity to, and in compliance with, the following terms and conditions.*† [Excerpt from findings]

*§§ 913.1 to 913.15, inclusive, issued under the authority contained in sec. 8c, 49 Stat. 753, 50 Stat. 246; 7 U.S.C., Sup., 608c.

†The source of §§ 913.1 to 913.15, inclusive, is Order 13, Department of Agriculture, Nov. 3, 1936, effective Dec. 1, 1936. (Order Ser., AAA)

913.2 Definitions. (a) “Kansas City, Missouri, marketing area”, hereinafter called the “marketing area”, is the territory within the corporate limits of Kansas City, Missouri.

(b) “Person” is any individual, partnership, corporation, association, and any other business unit.

(c) “Producer” is any person, irrespective of whether any such person is also a handler, who produces milk in conformity with the health requirements applicable for milk to be sold for consumption as milk in the marketing area.

(d) “Handlers” is any person, irrespective of whether such person is a producer or an association of producers, wherever located or operating, who engages in such handling of milk, which is sold as milk or cream in the marketing area, as is in the current of interstate or foreign commerce or which directly burdens, obstructs, or affects interstate or foreign commerce in milk and its products.

(e) “Market Administrator” is the person designated pursuant to § 913.3 as the agency for the administration hereof.

(f) “Delivery period” is the current marketing period from the 1st to, and including, the last day of each month.

(g) “Base” is the quantity of milk calculated for each producer pursuant to § 913.8 (d).*† [Art. I]

913.3 Market Administrator—(a) Selection, removal, and bond. The Market Administrator shall be selected by the Secretary and shall be subject to removal by him at any time. The Market Administrator shall, within 45 days following the date upon which he enters upon his duties, execute and deliver to the Secretary a bond, conditioned upon the faithful performance of his duties, in an amount and with surety thereon satisfactory to the Secretary.

(b) Compensation. The Market Administrator shall be entitled to such reasonable compensation as may be determined by the Secretary.

(c) Powers. The Market Administrator shall have power:

To administer the terms and provisions hereof; and

To receive, investigate, and report to the Secretary complaints of violations of the terms and provisions hereof; and

The Market Administrator, in addition to the duties hereinafter described, shall:

(1) Keep such books and records as will clearly reflect the transactions provided for herein;

(2) Submit his books and records to examination by the Secretary at any and all times;

*†For statutory and source citations, see note to § 913.1.

(3) Furnish such information and such verified reports as the Secretary may request;

(4) Obtain a bond with reasonable security thereon covering each employee who handles funds entrusted to the Market Administrator;

(5) Employ and fix the compensation of such persons as may be necessary to enable him to administer the terms and provisions hereof;

(6) Publicly disclose to handlers and producers, unless otherwise directed by the Secretary, the name of any person who within 15 days after the date upon which he is required to perform such acts, has not made reports pursuant to § 913.6 or made payments pursuant to § 913.9; and

(7) Pay, out of the funds provided by § 913.11, the cost of his bond and of the bonds of such of his employees as handle funds entrusted to the Market Administrator, his own compensation, and all other expenses which will necessarily be incurred by him for the maintenance and functioning of his office and the performance of his duties.

(d) Responsibility. The Market Administrator, in his capacity as such, shall not be held responsible in any way whatsoever to any handler or any other person for errors in judgment, for mistakes, or for other acts either of commission or omission, except for his own wilful misfeasance, malfeasance, or dishonesty.*† [Art. II]

913.4 Classification of milk—(a) Sales and use classification. Milk purchased or handled by handlers shall be classified as follows:

(1) All milk sold or distributed as milk shall be class I milk;

(2) All milk used to produce cream (for consumption as cream), flavored milk, creamed cottage cheese, and creamed buttermilk shall be class II milk; Provided, That the milk from which only the skimmed milk is used in the production of the above products shall not be included as class II milk; and

(3) All milk purchased, sold, or used in excess of class I and class II milk shall be class III milk.

(b) Interhandler sales. Milk sold by a handler to another handler shall be presumed to be class I milk. In the event that such selling handler, on or before the date fixed for filing reports pursuant to § 913.6, notifies the Market Administrator that such milk has been sold or disposed of by the purchasing handler other than as milk, then, and in that event, such milk shall be classified in accordance with such notification; Provided, That if such selling handler does not, on or before the 9th day after the end of the delivery period during which such sale was made furnish proof satisfactory to the Market Administrator in support of such notification, such milk shall then be classified as class I milk and so included in the statement rendered to the selling handler pursuant to § 913.9 (a) (3).

(c) Sales to nonhandlers. Milk sold by a handler to a person who is not a handler and who distributes milk or manufactures milk products shall be presumed to be class I milk. In the event that such selling handler, on or before the date fixed for filing reports pursuant to § 913.6 (a), notifies the Market Administrator that such milk has been sold or disposed of by such purchaser other than as milk, such milk shall be classified according to such notification;

Provided, That if such selling handler does not, on or before the 9th day after the end of the delivery period during which such sale was made, furnish proof satisfactory to the Market Administrator in support of the above notification, such milk or part thereof shall then be classified as class I milk and so included in the statement rendered to the selling handler pursuant to § 913.9 (a) (3).*† [Art. III]

913.5 Minimum prices—(a) Class I price. Each handler shall pay producers, at the time and in the manner set forth in § 913.9, for class I milk not less than \$2.40 per hundredweight at the plant of such handler.

(b) Class II price. Each handler shall pay producers, at the time and in the manner set forth in § 913.9 for class II milk not less than \$2.05 per hundredweight at the plant of such handler.

(c) Class III price. Each handler shall pay producers, at the time and in the manner set forth in § 913.9, for class III milk at the plant of such handler, not less than the price per hundredweight which shall be calculated by the Market Administrator as follows: Multiply by 3.8 the average price per pound of 92-score butter at wholesale in the Chicago market, as reported by the United States Department of Agriculture for the delivery period during which such milk is purchased, and add 25 cents.

(d) Sales outside the marketing area. The price to be paid to producers by a handler for class I milk sold outside the marketing area, in lieu of the price otherwise applicable pursuant to this section, shall be such price as the Market Administrator ascertains is being paid by processors, in the market where such milk is sold, for milk of equivalent use, subject to a reasonable adjustment on account of transportation from the plant where such milk is received from producers to the plant where such milk is loaded on wholesale and retail routes.*† [Art. IV]

913.6 Reports of handlers—(a) Periodic reports. On or before the 5th day after the end of each delivery period each handler shall, with respect to milk or cream which was, during such delivery period, received from producers, received from handlers, and produced by such handler, report to the Market Administrator, in the detail and form prescribed by him, as follows:

(1) The receipts at each plant from producers who are not handlers and the quantity of such receipts which represents the total of all milk delivered by producers in excess of their respective bases;

(2) The receipts at each plant from any other handler, including any handler who is also a producer;

(3) The quantity, if any, produced by such handler; and

(4) The respective quantities of milk which were sold, distributed, or used, including sales to other handlers, for the purpose of classification pursuant to § 913.4.

(b) Reports as to producers. Each handler shall report to the Market Administrator:

Within 10 days after the Market Administrator's request, with respect to any producer for whom such information is not in the files of the Market Administrator, and with respect to a period or

*†For statutory and source citations, see note to § 913.1.

periods of time designated by the Market Administrator, the name and address, the total pounds of milk delivered, the average butterfat test of milk delivered, and the number of days upon which deliveries were made; and as soon as possible after first receiving milk from any producer, the name and address of such producer, the date upon which such milk was first received, and the plant at which such producer delivered milk.

(c) **Reports of payments to producers.** Each handler shall submit to the Market Administrator on or before the 15th day after the end of each delivery period his producer payroll for such delivery period which shall show for each producer the net amount of such producer's payment with the prices, deductions, and charges involved, the total delivery of milk with the average butterfat test thereof, and the portion of such delivery which was in excess of the base of such producer.

(d) **Verification of reports.** In order that the Market Administrator may submit verified reports to the Secretary pursuant to § 913.3 (c), each handler shall permit the Market Administrator or his agent, during the usual hours of business, to verify the information contained in reports submitted in accordance with this section, and weigh milk delivered by each producer and sample and test milk for butterfat.*† [Art. V]

913.7 Handlers who are also producers—(a) Reports. Any handler, who is also a producer, shall make the report required by § 913.6 (a), only for any delivery period during which such handler purchases milk from producers.

(b) **Milk purchased from producers.** In the case of a handler who is also a producer and who has purchased milk from producers, the Market Administrator shall, before making the computations set forth in § 913.8, exclude the milk purchased by him in each class from other handlers, exclude from his remaining class I and class II milk up to but not exceeding 95 percent of the quantity of milk produced and sold by him, and exclude from his remaining class III milk the balance of the milk produced and sold by him.

(c) **Milk sold to other handlers.** Milk sold in bulk by a handler who is also a producer to another handler and sold or used as class I or class II milk by the purchasing handler, shall, in making the computation required by § 913.8 (a) for such purchasing handler, be multiplied by the difference between the class III price and the class I and class II price, as the case may be, and the resultant amount shall be added to the total value of milk otherwise computed.*† [Art. VI]

913.8 Determination of uniform prices to producers—(a) Computation of value of milk for each handler. For each delivery period the Market Administrator shall compute, subject to the provisions of § 913.7, the value of milk sold or used by each handler, which was not purchased from other handlers, by multiplying the quantity of such milk in each class by the price applicable pursuant to § 913.5 and adding together the resulting value of each class.

(b) **Computation and announcement of uniform prices.** The Market Administrator shall compute and announce the uniform

prices per hundredweight of milk delivered during each delivery period as follows:

(1) Combine into one total the respective values of milk, computed pursuant to paragraph (a) of this section, for each handler who made the reports prescribed by § 913.6 and who made the payments prescribed by § 913.9 for milk received during the previous delivery period;

(2) Subtract the total sum due producers pursuant to § 913.9 (a)(2);

(3) Divide by the total quantity of milk which is not in excess of the bases of producers and which is included in these computations;

(4) Subtract not less than 4 cents nor more than 5 cents per hundredweight of milk for the purpose of retaining a cash balance in connection with the payments set forth in § 913.9 (a)(3);

(5) Add an amount per hundredweight of milk which will prorate any cash balance available pursuant to paragraph (c) of this section; and

(6) On or before the 7th day after the end of each delivery period, notify all handlers, and make public announcement of these computations, of the blended price per hundredweight which is the result, and of the class III price.

(c) Proration of cash balance. For each delivery period the Market Administrator shall prorate, by an appropriate addition pursuant to paragraph (b) of this section, the cash balance, if any, in his hands from payments made by handlers, during the next preceding delivery period, to meet obligations arising out of § 913.9 (a)(4).

(d) Base rating. The base of each producer shall be a quantity of milk for each delivery period calculated in the following manner: Multiply the applicable figure, if any, effective pursuant to paragraph (e) of this section by the number of days on which such producer delivered milk during such delivery period or if no figure is effective for any producer, who is not also a handler, take the percent of the total milk delivered by him in bulk during such delivery period which is obtained by dividing total class I and class II milk by the total milk delivered; Provided That if total class I and class II milk exceeds the total of bases so computed, add thereto, in the case of each producer for whom a figure is effective pursuant to paragraph (e) of this section and who delivered milk in excess of base, the percentage of his excess milk which is the percentage of the total of such excess milk used by all handlers as class I and class II milk.

(e) Determination for base rating. For the purpose of calculating, pursuant to paragraph (d) of this section, the bases of producers, including producers who are also handlers, the Market Administrator shall determine a figure with respect to deliveries of milk in bulk to handlers by each producer as follows:

(1) Effective up to and including June 30, 1936, divide the total milk deliveries in bulk to handlers during the period of time beginning with November 16, 1935, and ending with February 15, 1936, by the number of days on which deliveries were made and take such

a percentage of the result as will make the total of all figures so determined approximately equal to 115 percent of the average class I and class II milk per day sold, during the 4th calendar quarter of the calendar year 1935, by all handlers to whom such milk was delivered;

(2) Effective for each calendar quarter subsequent to June 30, 1936, divide the total milk delivered by each producer not in excess of his base during the next preceding calendar quarter by the number of days on which such producer delivered milk and take such a percentage of the result as will make the total of all figures so determined approximately equal to 115 percent of the average class I and class II milk per day sold, during the 4th calendar quarter of the next preceding calendar year by all handlers to whom such milk was delivered;

(3) At the request of any producer who is also a handler and for whom no figure is effective pursuant to subparagraphs (1) and (2) of this paragraph, divide the total milk delivered by such producer in bulk to handler, during the 3 full delivery periods, immediately preceding the date of such request, by the number of days in such 3 delivery periods. Any figure determined pursuant to this subparagraph shall be effective through the full calendar quarter immediately following its determination and thereafter shall be superseded by a figure effective pursuant to subparagraph (2) of this paragraph; and

(4) In the case of a producer who is also a handler and who sells all or a part of his delivery routes to another handler, the Market Administrator shall determine a figure which is the average daily class I and class II milk produced and sold by such producer during the previous 3 months which such producer and such handler jointly report as involved in the deal and which the Market Administrator verifies. Any figure determined pursuant to this subparagraph shall be effective from its determination until the end of the full calendar quarter next following and thereafter shall be superseded by a figure effective pursuant to subparagraph (2) of this paragraph.*† [Art. VII]

913.9 Payments for milk—(a) Time and method of payment. On or before the 10th day after the end of each delivery period, each handler shall make payment, after allowing for the amount of the payment made pursuant to paragraph (b) of this section, for the total value of milk received from producers during such delivery period, computed according to § 913.8 (a), subject to butterfat and country station differentials, set forth in paragraphs (d) and (e), respectively, of this section, as follows:

(1) To producers, at the blended price per hundredweight computed pursuant to § 913.8 (b), for that quantity of milk delivered by each producer not in excess of the base of such producer;

(2) To producers, at the class III price, for that quantity of milk delivered by each producer in excess of his base; and

(3) To producers, through the Market Administrator, by paying to or receiving from the Market Administrator, as the case may be,

the amount by which the sums due producers pursuant to subparagraphs (1) and (2) of this paragraph are less than, or exceed, the value of milk computed for such handler pursuant to § 913.9 (a) as shown in a statement rendered by the Market Administrator on or before the 10th day after the end of such delivery period.

(b) Half-delivery period payments. On or before the 25th day of each delivery period each handler shall make payment to each producer for the approximate value of milk received from such producer during the first 15 days of such delivery period.

(c) Errors in payments. Errors in making the payments prescribed in this section shall be corrected not later than the date for making payments next following the determination of such errors.

(d) Butterfat differential. If any producer has delivered to any handler during any delivery period milk having an average butterfat content other than 3.8 percent, such handler shall pay to each producer for each one-tenth of one percent of average butterfat content above 3.8 percent, or shall deduct for each one-tenth of one percent of average butterfat content below 3.8 percent, 4 cents per hundredweight.

(e) Country station differentials. If any producer has delivered milk to any handler's plant located more than 30 miles from the city hall in Kansas City, such handler may deduct, with respect to that quantity of milk delivered which is represented by such producer's base, up to but not exceeding the amount per hundredweight specified for the distance of such plant from the city hall in Kansas City as follows; not more than 45 miles, 17 cents per hundredweight; and for each additional 10 miles or part thereof an additional 1½ cents per hundredweight.*† [Art. VIII]

913.10 Marketing services—(a) Deductions for marketing services. Except as set forth in paragraph (b), each handler shall deduct 3 cents per hundredweight from the payments made to each producer pursuant to § 913.9 (a) (1) and (2) with respect to all milk delivered to such handler during each delivery period by such producer and shall pay such deductions to the Market Administrator on or before the 10th day after the end of such delivery period. Such monies shall be expended by the Market Administrator for market information to, and for verification of weights, sampling and testing of milk purchased from said producers.

(b) Producers' cooperative associations. In the case of producers for whom a cooperative association, which the Secretary determines to be qualified under the provisions of the Act of Congress of February 18, 1922 (42 Stat. 388; 7 U.S.C. 291, 292), as amended, known as the "Capper-Volstead Act", is actually performing, as determined by the Secretary, the services set forth in paragraph (a) of this section, each handler shall make the deductions from the payments to be made pursuant to § 913.9 (a) (1) and (2) which are authorized by such producers and, on or before the 10th day after the end of each delivery period, pay over such deductions to the associations of which such producers are members.*† [Art. IX]

*†For statutory and source citations, see note to § 913.1.

913.11 Expenses of administration—(a) Payments by handlers. As his pro rata share of the expense of the administration hereof, each handler shall, on or before the 10th day after the end of each delivery period, pay to the Market Administrator a sum not exceeding 2 cents per hundredweight with respect to all milk delivered to him during such delivery period by producers or an association of producers, the exact amount to be determined by the Market Administrator subject to review by the Secretary; Provided, That each handler which is a cooperative association of producers, shall pay such pro rata share of expense of administration only on that milk actually received from producers at any plant of such association.

(b) Suits by Market Administrator. The Market Administrator may maintain a suit in his own name against any handler for the collection of such handler's pro rata share of expense set forth in this section.*† [Art. X]

913.12 Effective time, suspension, and termination. The provisions hereof, or any amendment hereto, shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated, pursuant to this section. Any or all provisions hereof or any amendment hereto shall be suspended or terminated as to any or all handlers after such reasonable notice as the Secretary may give, and shall, in any event, terminate whenever the provisions of the Act authorizing it cease to be in effect. Unless otherwise provided by the Secretary in the notice of amendment, suspension, or termination of any or all provisions hereof, the amendment, suspension, or termination shall not: affect, waive, or terminate any right, duty, obligation, or liability which shall have arisen or may thereafter arise in connection with any provisions hereof; release or waive any violation hereof occurring prior to the effective date of such amendment, suspension, or termination; or affect, or impair, any rights or remedies of the Secretary, or of any other person, with respect to any such violation.*† [Art. XI, secs. 1, 2, 3]

913.13 Continuing power and duty. If, upon the suspension or termination of any or all provisions hereof, there are any obligations arising hereunder, the final accrual or ascertainment of which requires further acts by any handler, by the Market Administrator, or by any other person, the power and duty to perform such further acts shall continue notwithstanding such suspension or termination; Provided, That any such acts required to be performed by the Market Administrator, shall, if the Secretary so directs, be performed by such other person, persons, or agency as the Secretary may designate.

The Market Administrator, or such other person as the Secretary may designate, shall continue in such capacity until discharged by the Secretary, from time to time account for all receipts and disbursements and deliver all funds or property on hand, together with the books and records of the Market Administrator, or such person, to such person as the Secretary shall direct, and if so directed

by the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title to all funds, property, and claims vested in the Market Administrator or such person pursuant hereto.*† [Art. XI, sec. 4]

913.14 Liquidation after suspension or termination. Upon the suspension or termination of any or all provisions hereof, the Market Administrator, or such person as the Secretary may designate, shall liquidate the business of the Market Administrator's office, and dispose of all funds and property then in his possession or under his control, together with claims for any funds which are unpaid and owing at the time of such suspension or termination. Any funds collected pursuant to the provisions hereof over and above the amounts necessary to meet outstanding obligations and the expenses necessarily incurred by the Market Administrator or such person in liquidating and distributing such funds, shall be distributed to the contributing handlers and producers in an equitable manner.*† [Art. XI, sec. 5]

913.15 Liability. The liability of the handlers hereunder is several and not joint and no handler shall be liable for the default of any other handler.*† [Art. XII]

PART 914—ONIONS GROWN IN UTAH

| Sec. | Sec. |
|---|--|
| 914.1 Excerpt from findings. | 914.5 Expenses. (a) Expenses. (b) Shipping permits. |
| 914.2 Definitions. | 914.6 Liability of Control Board members. |
| 914.3 Control Board. (a) Membership and organization. (b) Failure to select members. (c) Organization. (d) Removal and disapproval. (e) Expenses. (f) Authority. (g) Voting, procedure, and funds. | 914.7 Charitable purposes. 914.8 Effect of termination or amendment. 914.9 Continuing power and duty. 914.10 Effective time and termination. 914.11 Proceedings after termination. 914.12 Duration of immunities. 914.13 Agents. 914.14 Amendments. 914.15 Separability. 914.16 Derogation. |
| 914.4 Grade and size regulation. (a) Grades and sizes. (b) Inspection. (c) Exemptions. (d) Compliance. | |

Section 914.1 Excerpt from findings. The Secretary of Agriculture, acting under the authority vested in him by section 8c of the Agricultural Adjustment Act (49 Stat. 753, 50 Stat. 246; 7 U.S.C., Sup., 608c), orders that the handling of onions grown in the State of Utah, in the current of interstate or foreign commerce, or so as directly to burden, obstruct, or affect interstate or foreign commerce in such onions, from and after April 26, 1937, shall be in conformity to and in compliance with the terms and conditions of this part.*††† [Excerpt from findings]

*§§ 914.1 to 914.16, inclusive, issued under the authority contained in sec. 8c, 49 Stat. 753, 50 Stat. 246; 7 U.S.C., Sup., 608c.

††The source of §§ 914.1 to 914.16, inclusive, is Order 14, Department of Agriculture, Apr. 22, 1937, effective April 26, 1937. (Order Ser., AAA)

*†For statutory and source citations, see note to § 913.1.

914.2 Definitions. As used in this part, the following terms have the following meanings:

(a) "Secretary" means the Secretary of Agriculture of the United States.

(b) "Act" means the Agricultural Adjustment Act, approved May 12, 1933 (48 Stat. 31; 7 U.S.C. Chapter 26), as amended.

(c) "Person" means any individual, partnership, corporation, association, and any other business unit.

(d) "Onions" means and includes all varieties of onions grown in and shipped from the State of Utah.

(e) "Variety" means a type of onion having similar characteristics, as for example the yellow Spanish type, the white Spanish type, and the yellow Danvers type.

(f) "To handle" or "to ship" means to sell for shipment in, to ship in, or in any other way to put into the channels of trade in the current of interstate or foreign commerce, or so as directly to burden, obstruct, or affect interstate or foreign commerce.

(g) "Season" means the twelve-month period beginning August 1 and ending July 31, both inclusive.

(h) "Producer" means any person who produces onions in the State of Utah, for sale or shipment in the current of interstate or foreign commerce, or in any manner whereby the same directly burdens, obstructs, or affects interstate or foreign commerce.

(i) "Handler" means any person who handles onions, including producers who handle onions of their own production or for others.

(j) "Control Board" means the control agency selected in accordance with the provisions of § 914.3.*† [Art. I]

914.3 Control Board—(a) Membership and organization. (1) A control board consisting of seven (7) members is hereby established to assist the Secretary in the administration of this part. Within five (5) days after the effective date of this part, and between the 15th and 31st day of May annually thereafter, there shall be named twelve (12) nominees, and said nominations shall then be certified to the Secretary. The nominations shall be made as follows:

Six (6) nominees shall be chosen in a general election in which all handlers shall be entitled to participate. At any such election each handler shall be entitled to cast but one (1) ballot on behalf of himself, agents, partners, affiliates, subsidiaries, and representatives.

Six (6) nominees shall be chosen by producers in the following manner: Two (2) nominees shall be chosen at a general election in which all producers of Utah County shall be entitled to participate; two (2) nominees shall be chosen at a general election in which all producers of Davis and Salt Lake Counties shall be entitled to participate; and two (2) nominees shall be chosen at a general election in which all producers of Weber, Morgan, Cache, and Box Elder Counties shall be entitled to participate. At such elections each producer shall be entitled to cast one (1) ballot in behalf of himself, agents, partners, affiliates, subsidiaries, and representatives. Each such nominee shall be a producer of onions who during the season preceding his nomination did not ship, consign, or otherwise handle

onions not produced by himself in excess of ten percent (10%) of the total quantity shipped, consigned, or otherwise handled by such nominee.

(2) The Secretary shall select from the nominees of the handlers, three (3) handler members and their respective alternates; from the nominees of Utah County one (1) producer member and his alternate; from the nominees of Davis and Salt Lake Counties, one (1) producer member and his alternate; and from the nominees of Weber, Morgan, Cache, and Box Elder Counties, one (1) producer member and his alternate. The six (6) members thus selected by the Secretary shall, at their first meeting, nominate not less than two (2) persons who shall be residents of the State of Utah but shall not be producers or handlers, and from such nominees the Secretary shall select a member and his alternate.

(3) Any vacancy on the Control Board caused by death, resignation, removal, or for any other cause, shall be filled by the Secretary from two (2) nominees nominated, in the same manner as was the original member, within ten (10) days after the vacancy occurs; and the nominees shall be producers or handlers or neither, depending upon whether the vacancy was caused by a producer or handler member or a member that was neither a producer nor a handler member.

(4) No delay in the nomination or selection of any member, alternate or successor of the Control Board shall be deemed to invalidate any such selection. Any person selected as a member or alternate of the Control Board shall qualify by filing a written acceptance of his appointment with the Secretary or with the Secretary's designated representative.

(5) Notwithstanding the other provisions of this paragraph, the Secretary may select as members of the Control Board persons not nominated, provided such persons have the same qualifications for membership as are required of persons nominated.

(b) Failure to select members. If a nomination for any member, alternate, or successor is not made within the applicable period specified in this section, the Secretary may select a member, alternate, or successor without regard to nominations.

(c) Organization. Upon the selection of five (5) of its members, the Control Board may organize and commence to function: Provided, however, That the Control Board shall not perform any of its duties or exercise any authority provided herein while there are more than two (2) vacancies in its membership.

In the transaction of all business, each member of the Control Board shall be entitled to cast but one (1) vote.

(d) Removal and disapproval. The members of the Control Board (including successors and alternates), and any agents or employees appointed or employed by the Control Board, shall be subject to removal by the Secretary at any time. Each and every order, regulation, decision, determination, or other act of the Control Board shall be subject to the continuing right of the Secretary to disapprove of the same at any time, and upon such disapproval shall be deemed null and void, except as to acts done prior to such disapproval and

in reliance on, or in compliance with such regulation, determination, or other act of the Control Board.

(e) **Expenses.** Members of the Control Board shall serve without compensation, but shall be entitled to expenses necessarily incurred in the performance of their powers and duties hereunder.

(f) **Authority.** The Control Board is hereby authorized:

(1) To administer, as hereinafter specifically provided, the terms and provisions hereof;

(2) To make, in accordance with the provisions herein contained, administrative rules and regulations;

(3) To receive, investigate, and report to the Secretary of Agriculture complaints of violations of this part; and

(4) To recommend to the Secretary of Agriculture amendments to this part; and

(5) To act as intermediary between the Secretary and any handler;

(6) To keep minute books and records which will clearly reflect all of its acts and transactions, and such minute books and records shall at any time be subject to the examination of the Secretary;

(7) To furnish to the Secretary such available information as he may request;

(8) To appoint such employees as it may deem necessary and to determine the compensation and define the duties of such employees;

(9) To require the posting of a bond by any member of the Control Board, or any person employed under this part, who handles funds. Such bond shall be in an amount not less than the maximum amount of funds that may, at any time, be entrusted to such member or employee under the terms of this part;

(10) To consult with any committee established pursuant to any marketing agreement or with any handlers operating under an order of the Secretary with respect to the handling of onions grown in any area covered by such marketing agreement or order, which are handled at the same time or under similar conditions, to the end that this order may be administered, within the terms and conditions hereof, in conjunction with such marketing agreement or order, so as best to effectuate the purposes of the Act; and

(11) To perform such duties in connection with the administration of section 32 of the Act to amend the Agricultural Adjustment Act, and for other purposes (49 Stat. 774, 1151; 7 U.S.C., Sup., 612c), as amended, as may from time to time be assigned to it by the Secretary.

(g) **Voting, procedure, and funds.** All decisions of the Control Board shall be by a majority of the votes of the qualified members. Five (5) members of the Control Board shall constitute a quorum to transact all business.

All funds received by the Control Board, pursuant to any provision of this part, shall be used solely for the purpose therein specified and shall be accounted for in the following manner:

(1) The Secretary may require the Control Board and its members to account for all receipts and disbursements; and

(2) Upon the removal from office or upon the expiration of the term of office of any member of the Control Board, he shall account for all receipts and disbursements, and deliver all property and funds, together with all books and records in his possession, to his successor in office, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in such successor full title to all of the property, funds, and/or claims vested in such member pursuant to this part.*† [Art. II]

914.4 Grade and size regulation—(a) Grades and sizes. If the Secretary, upon recommendation of the Control Board or otherwise, finds regulation of shipments will tend to effectuate the purposes of this part, he may limit shipments of any or all varieties of onions produced during any season, for any period of time, by prohibiting handlers from handling any or all varieties of onions of a United States grade or grades other than the grade or grades specified by the Secretary, and/or prohibiting handlers from handling any or all varieties of onions of a size or sizes other than the size or sizes specified by the Secretary: Provided, That no such limitation of shipments by grade shall be applicable to any shipment when Federal-State Inspection Service cannot be had for such shipment. The Secretary shall give not less than three (3) days' notice to handlers and producers of any limitation of shipments pursuant to this paragraph, by means of a press release, or by posting notices in such places as the Secretary may determine to be necessary or desirable, or by such other means as the Secretary deems necessary, for the purpose of notifying handlers and producers of the institution of such limitation.

(b) Inspection. During any period in which the Secretary has limited shipments, as provided in paragraph (a) of this section, no onions shall be handled from the State of Utah unless they have been inspected, and their variety, size, and conformity to the United States grade certified, by an authorized representative of the Federal-State Inspection Service.

(c) Exemptions. (1) Before the institution of any limitation of shipments pursuant to paragraph (a) of this section, the Control Board shall determine the percentage which the total quantity of onions subject to such limitation and permitted to be shipped, is of the total quantity of such onions available for shipment from the State of Utah. The Control Board shall forthwith announce this percentage and the procedure by which exemption certificates may be issued to growers pursuant to this paragraph.

(2) Any producer who would, because of such limitation, be unable to dispose of as large a percentage of such onions produced by him as the percentage which the Control Board, pursuant to subparagraph (1) of this paragraph, has determined can be handled from the State of Utah, may apply to the Control Board for permission to handle such onions of his own production, either himself or through a handler. In such case the Control Board shall issue a certificate granting to such producer permission to handle such onions to the extent necessary for such producer to dispose of a percentage of such onions avail-

*†For statutory and source citations, see note to § 914.1.

able for shipment during the limitation period equal to the percentage determined by the Control Board pursuant to subparagraph (1) of this paragraph. The Control Board shall retain a copy of such certificate, together with a statement of the evidence upon which it was granted. If any grower is dissatisfied with the determination of the Control Board with respect to such exemption certificate, he may appeal to the Secretary.

(d) **Compliance.** Except as provided in § 914.7 no handler shall ship or contract to ship onions of a size or grade, the shipment of which has been prohibited by the Secretary pursuant to this section.*† [Art. III]

914.5 Expenses—(a) Expenses. Each handler shall pay to the Control Board such handler's pro rata share (as approved by the Secretary) of such expenses, as the Secretary may find will necessarily be incurred by the Control Board during any period specified by the Secretary, for the maintenance and functioning of the Control Board, other than expenses incurred in receiving, handling, holding or disposing of any quantity of onions received, handled, held or disposed of by such Control Board for the benefit or account of persons other than handlers subject to this part.

(b) **Shipping permits.** The Secretary may, in his discretion, for the purpose of collecting money for administrative expenses under this part, require handlers to purchase from the Control Board, for such specified period of time, permits to be affixed to each package or carload of onions before the same shall be handled: Provided, however, That any payments received for such permits shall be used for the purposes set forth in paragraph (a) of this section, and shall, in no event, exceed the pro rata share of expenses required to be paid by any handler.*† [Art. IV]

914.6 Liability of Control Board members. No member of the Control Board nor any employee thereof shall be held responsible individually in any way whatsoever to any handler or any other person for errors in judgment, mistakes, or other acts, either of commission or omission, of such member or employee, except for dishonesty.*† [Art. V]

914.7 Charitable purposes. Nothing contained in this part shall be construed to authorize any limitation of the right to ship onions for consumption by charitable institutions or relief agencies. The Control Board may, from time to time, prescribe proper safeguards to prevent onions shipped for such purposes from being introduced into the commercial channels of trade contrary to the provisions of this part.*† [Art. VI, sec. 1]

914.8 Effect of termination or amendment. Unless otherwise expressly provided in the notice of termination, or in the amendment of this part, no termination or amendment of this part shall either affect, waive or terminate any right, duty, obligation or liability which shall have arisen or may thereafter arise in connection with any provision of this part; or release or forgive any violation of this part occurring prior to the effective time of such termination or

amendment, or affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violation.*† [Art. VI, sec. 2]

914.9 Continuing power and duty. If, upon the termination of this part, there are any obligations arising thereunder, the final approval or ascertainment of which requires further acts by any party subject thereto, or by the Control Board, or by any other person, the authority and/or duty to perform such further acts shall continue notwithstanding such termination: Provided, That any such acts required under the terms of this part to be performed by the Control Board hereunder shall be performed by the members of such board functioning at the effective time of such termination, or, if the Secretary shall so direct, by such other person, persons or agency as the Secretary may designate.*† [Art. VI, sec. 3]

914.10 Effective time and termination. This part shall become effective at such time as the Secretary may declare above his signature attached hereto, and shall continue in force until terminated as follows:

The Secretary may at any time terminate this part by giving at least one (1) day's notice by means of a press release or in any other manner which he may determine.

This part shall, in any event, terminate whenever the provisions of the Act authorizing it cease to be in effect.*† [Art. VII, sec. 1]

914.11 Proceedings after termination. Upon the termination of this part, the members of the Control Board then functioning shall continue as joint trustees, for the purposes of this part, of all funds and property then in the possession of or under the control of said board, including claims for any funds unpaid or property not delivered at the time of such termination.

Said trustees (a) shall continue in such capacity until discharged by the Secretary;

(b) Shall account, from time to time, for all receipts and disbursements and/or deliver all funds and property on hand, together with all books and records of the Control Board and of the joint trustees, to such person as the Secretary shall direct; and

(c) Shall execute, upon the request of the Secretary, such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds and/or claims vested in the Control Board or the joint trustees pursuant to this part. Any funds collected pursuant to § 914.5, and held by such joint trustees or such person, over and above the amount necessary to meet outstanding obligations and expenses necessarily incurred by the joint trustees, or such other person, in the performance of their duties hereunder, shall be returned as soon as practicable (after the termination of this part) to the handlers, pro rata, in proportion to their contributions made pursuant to this part.

Any and all persons to whom funds and/or claims have been delivered by the Control Board or its members, pursuant to this section, shall be subject to the same obligations and duties with respect to said funds as are hereinabove imposed upon the members of said board.*† [Art. VII, sec. 2]

*†For statutory and source citations, see note to § 914.1.

914.12 Duration of immunities. The benefits, privileges, and immunities conferred by virtue of this part, shall cease upon its termination, except with respect to acts done under and during the existence of this part, and the benefits, privileges, and immunities conferred by this part upon any person shall cease upon its termination as to such person, except with respect to acts done under and during the existence of this part.*† [Art. VIII]

914.13 Agents. The Secretary may by a designation in writing name any person not subject to this part, including any officer or employee of the Government, or name any Bureau or Division in the Department of Agriculture, or any board or committee created hereunder, to act as his agent or representative in connection with any of the provisions of this part.*† [Art. IX]

914.14 Amendments. Amendments to this part may be proposed at any time by any party subject hereto or by the Control Board.*† [Art. X]

914.15 Separability. If any provision of this part is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this part and/or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.*† [Art. XI]

914.16 Derogation. Nothing contained in this part is or shall be construed to be in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the act or otherwise, and/or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.*† [Art. XII]

PART 915—GRAPEFRUIT AND ORANGES GROWN IN CAMERON, HIDALGO, AND WILLACY COUNTIES, TEXAS

| Sec. | Sec. |
|---|--|
| 915.1 Excerpt from findings. | (b) Application for allotment base and allotments. |
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Sec.

- (k) Fixing of allotments by Secretary.
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 (a) Limitation of grade or size shipments.
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 915.8 Proceedings after termination.
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 915.10 Agents.
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 915.13 Separability.

Section 915.1 Excerpt from findings. The Secretary, acting under the authority vested in him by section 8c of the Agricultural Adjustment Act (49 Stat. 753, 50 Stat. 246; 7 U.S.C., Sup., 608c), orders that such handling of grapefruit and oranges grown in Cameron, Hidalgo and Willacy Counties in the State of Texas, as is in the current of interstate or foreign commerce, or which directly burdens, obstructs, or affects interstate or foreign commerce in such grapefruit and oranges, from and after July 13, 1937, shall be in conformity to and in compliance with the terms and conditions of this part.*†

[Excerpt from findings]

*§§ 915.1 to 915.13, inclusive, issued under the authority contained in sec. 8c, 49 Stat. 753, 50 Stat. 246; 7 U.S.C., Sup., 608c.

†The source of §§ 915.1 to 915.13, inclusive, is Order 15, Department of Agriculture, July 9, 1937, effective July 13, 1937. (Order Ser., AAA)

915.2 Definitions. As used in this part, the following terms have the following meanings:

(a) "Person" means individual, partnership, corporation, association, and any other business unit.

(b) "Citrus fruit" or "fruit" means grapefruit and oranges grown in Cameron, Hidalgo and Willacy Counties in the State of Texas.

(c) "Variety" or "varieties" as used herein means classifications or groups, in the case of oranges as follows: early season oranges, and valencias, including all varieties of valencias and Leu Gim Gongs; in the case of grapefruit as follows: Marsh and other seedless varieties except pinks, Duncan and other seeded varieties except pinks, pinks of the seeded type, and pinks of the seedless type.

(d) "Handler" or "shipper" means any person who ships fruit, or causes fruit to be shipped, in the current of interstate or foreign commerce, or so as directly to burden, obstruct or affect interstate or foreign commerce.

(e) "Producer" means any person engaged in the production of citrus fruit in Cameron, Hidalgo and Willacy Counties, Texas, for commercial purposes, or who is a substantial stockholder in a corporation engaged in the production of citrus fruit in Cameron, Hidalgo and Willacy Counties, Texas, for commercial purposes.

(f) "Interstate commerce" means transactions involving the sale or transportation for sale of fruit from Texas to any point outside of Texas in continental United States.

(g) "Foreign commerce" means transactions involving the sale or transportation for sale of fruit from Texas to Canada, and does not include sale or transportation of fruit for sale to any foreign country or territory other than Canada.

(h) "Ship" means to convey fresh fruit, or cause fresh fruit to be conveyed, in the current of interstate or foreign commerce, by rail, truck, boat, or any other means whatsoever (except by express or parcel post), whether as owner, agent, or otherwise, but not as a common carrier of fruit owned by another person.

(i) "Shipment" shall be deemed to take place when fresh fruit is loaded into a car, or other conveyance, for transportation in the current of interstate or foreign commerce.

(j) "Standard packed box" means a unit of measure equivalent to one and three-fifths ($1\frac{3}{5}$) U. S. Bushels of fruit.

(k) "District" means any of the following areas:

Mission District: South boundary: Rio Grande River; West boundary: Hidalgo County line; North boundary: Hidalgo County line; East boundary: Missouri Pacific Railroad from Monte Christo to Mission extended south to the Rio Grande River and extended north to Hidalgo County line.

Sharyland District: West boundary: East boundary of Mission district; North boundary: Hidalgo County line; South boundary: Rio Grande River; East boundary: Weir Road extended north to Hidalgo County line and extended south to Rio Grande River.

McAllen District: West boundary: East boundary of Sharyland district; South boundary: Rio Grande River; East boundary: State Highway No. 12 extended south to Rio Grande River and extended north to Edinburg, thence west along West Edinburg Highway to Mile $15\frac{1}{2}$ West, thence north along Mile $15\frac{1}{2}$ West to Hidalgo County line; North boundary: Hidalgo County line.

Pharr-San Juan-Alamo District: West boundary: State Highway No. 12 from Edinburg south extended south to the Rio Grande River; North boundary: East Edinburg Highway from Edinburg to Tower Road or Mile $7\frac{1}{2}$ West; East boundary: Mile $7\frac{1}{2}$ West or Tower Road extended south to Rio Grande River.

Edinburg District: North boundary: Hidalgo County line; West boundary: Mile $15\frac{1}{2}$ West extended north to Hidalgo County line; South boundary: West Edinburg Highway from Mile $15\frac{1}{2}$ West to Edinburg, thence along East Edinburg Highway to Edcouch; East boundary: Missouri Pacific tract from Edcouch to Hidalgo County line, thence north to northern boundary of Hidalgo County.

Donna-Weslaco District: West boundary: Tower Road or Mile $7\frac{1}{2}$ West; North boundary: Mile $16\frac{1}{2}$ North; East boundary: Missouri Pacific Railroad from Edcouch to Weslaco, thence south along Mile $4\frac{1}{2}$ West extended south to Rio Grande River.

Mercedes District: West boundary: East boundaries of Edinburg and Donna-Weslaco Districts; North boundary: Hidalgo County line; East boundary: Cameron County line; South boundary: Rio Grande River.

La Feria District: West boundary: Hidalgo County line; South boundary: Rio Grande River; North boundary: Cameron County line; East boundary: Adams Road extended north to State Highway No. 96, thence to Cameron County line, and extended south to Rio Grande River.

Harlingen District: West boundary: East boundary of La Feria district; North boundary: Cameron County line; East boundary: Arroyo Colorado from Willacy County line to point of intersection with main line of Missouri Pacific Railroad; thence south along line of Missouri Pacific Railroad to San Benito, thence along branch of Missouri Pacific Railroad to Los Indios, thence south to Rio Grande River.

Raymondville District: All of Willacy County shall constitute the Raymondville district.

San Benito District: West boundary: Eastern boundary of Harlingen District; Eastern boundary: Gulf of Mexico; Southern boundary: State Highway No. 100 Port Isabel to Barreda, thence South along State Highway No. 4 to Resaca Pancho, thence along Resaca Pancho to Rio Grande River.

Brownsville District: North and West boundary: Southern boundary of San Benito District; East boundary: Gulf of Mexico; South boundary: Rio Grande River.

*†[Art. I]

915.3 Administrative bodies—(a) Naming of committees. A Growers Industry Committee and a Shippers Marketing Committee are hereby established which shall administer the terms and provisions of this part as hereinafter specifically provided, and the membership of which shall be selected in accordance with the provisions of this section.

(b) Membership of Growers Industry Committee. The Growers Industry Committee shall consist of twelve (12) members whose principal business is the production of citrus fruit. The initial members and alternates shall hold office for a term beginning on the date designated by the Secretary and ending the first Monday in August, 1938, and until their successors are selected and qualified. After the first Monday of August, 1938, the term of office of members and alternates shall be one year expiring on the first Monday of August of each year. The members, their alternates and their respective successors shall be selected by the Secretary from the respective nominees of the groups of producers hereinafter designated to make nominations. If nominations are not made for any one or more of such members or alternates as herein provided, the Secretary may select any such member or alternate for whose office a nomination has not been made without regard to nominations.

Nominations of at least four (4) persons for a member and his alternate shall be made by each of the following groups:

- (1) Producers of citrus fruit who during the year in which nominations are being made produced fruit in the Mission Districts;
- (2) Producers of citrus fruit who during the year in which nominations are being made produced fruit in the Sharyland District;
- (3) Producers of citrus fruit who during the year in which nominations are being made produced fruit in the McAllen District;
- (4) Producers of citrus fruit who during the year in which nominations are being made produced fruit in the Pharr-San Juan-Alamo District;
- (5) Producers of citrus fruit who during the year in which nominations are being made produced fruit in the Edinburg District;
- (6) Producers of citrus fruit who during the year in which nominations are being made produced fruit in the Donna-Weslaco District;
- (7) Producers of citrus fruit who during the year in which nominations are being made produced fruit in the Mercedes District;
- (8) Producers of citrus fruit who during the year in which nominations are being made produced fruit in the La Feria District;
- (9) Producers of citrus fruit who during the year in which nominations are being made produced fruit in the Harlingen District;
- (10) Producers of citrus fruit who during the year in which nominations are being made produced fruit in the Raymondville District;
- (11) Producers of citrus fruit who during the year in which nominations are being made produced fruit in the San Benito District;
- (12) Producers of citrus fruit who during the year in which nominations are being made produced fruit in the Brownsville District.

*†For statutory and source citations, see note to § 915.1.

In the year 1937, all nominations shall be submitted to the Secretary not later than thirty (30) days after the effective date of this part, and in ensuing years beginning with the first Monday in August, 1938, all nominations shall be submitted to the Secretary on or before the 20th day of July of the year in which members of the Growers Industry Committee are to be selected.

Nominees for members of the Growers Industry Committee and their alternates shall be selected by the above-designated groups in the following manner: The Secretary, or such person as the Secretary may designate, shall cause to be held in the year 1937 within fifteen (15) days after the effective date of this order, and in ensuing years not less than twenty (20) days prior to the expiration of the term of office of the members of the Growers Industry Committee and their alternates, a meeting of the producers in each district who produced citrus fruit during the year in such district. Each such meeting shall select its chairman and secretary. In the selection of nominees each producer shall be entitled to cast but one (1) vote regardless of the number of districts in which he may be producing fruit. The chairman of the meeting shall publicly announce at such meeting the total number of votes cast and the names of the persons selected as nominees, and the chairman and the secretary shall forthwith transmit to the Secretary, or to such person as the Secretary may designate, their certificate as to the number of votes so cast and the names of the nominees selected.

(c) **Membership of shippers marketing committee.** The Shippers Marketing Committee shall consist of seven (7) members who shall be handlers of citrus fruit and who shall hold office for a term beginning on the date designated by the Secretary and ending with the first Monday in August, 1938, and until their successors are selected and qualified. After the first Monday of August, 1938, the term of office of members and alternates shall be one year expiring on the first Monday of August of each year. The Secretary, or such person as the Secretary may designate, shall give notice to persons who have handled fruit during the year in which nominations are being made, in the year 1937 within fifteen (15) days after the effective date of this part, and in ensuing years not less than twenty (20) days prior to the expiration of the term of office of the members of the Shippers Marketing Committee and their alternates, of the right of such person to participate in making nominations, for members of the Shippers Marketing Committee and their alternates. Such notice may be given by mail to persons known to the Secretary to have handled fruit during the year in which nominations are being made or by public notice in at least one newspaper of general circulation and shall specify the dates of meetings of handlers to make nominations. Nominations for members of the Shippers Marketing Committee and their alternates shall be made as hereinafter provided.

(1) Nominations of at least nine (9) persons for three (3) members and their alternates shall be made by handlers comprising growers' marketing groups who, during the year in which nominations are being made, shipped fruit from points within the State of Texas; and

(2) Nominations of at least twelve (12) persons for four (4) members and their alternates shall be made by handlers other than handlers comprising growers' marketing groups who, during the year in which nominations are being made, shipped fruit from points within the State of Texas.

The selection of the nominees for the members and their alternates of the Shippers Marketing Committee shall be made at a meeting of each of the aforesaid groups of handlers at which each handler shall be entitled to cast but one (1) vote on behalf of himself, agents, partners, affiliates, subsidiaries and representatives which shall be weighted according to the volume of fruit shipped by such handlers during the preceding shipping season. The chairman and secretary of each meeting shall forthwith transmit to the Secretary, or to such person as the Secretary may designate, their certificate as to the number of votes so cast and the names of the nominees selected.

(d) **Acceptance; successor members.** Any person selected by the Secretary as a member or alternate of the Growers Industry Committee or the Shippers Marketing Committee shall qualify by filing a written acceptance of this appointment with the Secretary or his designated representative.

An alternate for a member of the Growers Industry Committee or the Shippers Marketing Committee shall act in the place and stead of such member (1) in his absence or (2) in the event of his removal, resignation, or disqualification.

In the event of the death, removal, resignation or disqualification of any member or his alternate of either committee, a successor for the unexpired term of such member or alternate shall be selected by the Secretary. Such selection may be made without resorting to the provision as to nominations of candidates for the office of member or alternate.

(e) **Powers and duties.** The Growers Industry Committee shall, in addition to the power to administer the terms and provisions of this part, as herein specifically provided, have power (1) to make, only to the extent specifically permitted by the provisions hereinafter contained, administrative rules and regulations; (2) to receive, investigate and report to the Secretary complaints of violations of this part; and (3) to recommend to the Secretary amendments to this part.

It shall be the duty of the Growers Industry Committee and the Shippers Marketing Committee to keep minutes, books and records which will clearly reflect all of their acts and transactions, and such minutes, books and records shall at all times be subject to the examination of the Secretary.

It shall be the duty of the Growers Industry Committee to act as intermediary between the Secretary and the producers and handlers; to furnish the Secretary such available information as he may request; to appoint such employees as it may deem necessary and to determine the salaries and define the duties of any such employees; to cause the books of the Growers Industry Committee to be audited by one or more competent accountants at least once for each crop year and at such other times as the Growers Industry Committee deems

necessary or as the Secretary may request, and to file with the Secretary copies of all audit reports made; and to perform such duties in connection with the administration of section 32 of the Act to amend the Agricultural Adjustment Act, and for other purposes (49 Stat. 774, 1151; 7 U.S.C., Sup., 612c), as amended, as may from time to time be assigned to it by the Secretary.

(f) **Voting procedure; removal or suspension of members.** For any decision of the Growers Industry Committee to be valid seven (7) concurring votes shall be necessary, and for any decision of the Shippers Marketing Committee to be valid five (5) concurring votes shall be necessary. Each member, or alternate then serving in the place and stead of any member of either committee, must vote in person.

Eight (8) members of the Growers Industry Committee or five (5) members of the Shippers Marketing Committee shall be necessary to constitute a quorum.

In the event the Shippers Marketing Committee fails to make a decision by five concurring votes in the performance of any of its powers or duties under this part, the Growers Industry Committee shall perform such duties or exercise such power.

The members, and alternates when acting in the place and stead of a member as provided by this part, of the committees functioning under the provisions of this part shall be reimbursed for expenses necessarily incurred by them in the performance of their duties, and each of the members of the Growers Industry Committee and of the Shippers Marketing Committee, and their alternates, when acting in their place and stead shall receive compensation at a rate to be determined by the Growers Industry Committee but not to exceed five (\$5.00) dollars for each meeting actually attended by a member or the alternate when acting in the place and stead of the member.

The Committees shall give to the Secretary, or his designated agents and representatives, the same notice of meetings of the committees as is given to the members of the committees.

The members of each committee shall select a chairman from their membership, and all communications from the Secretary to the Committees may be addressed to the chairman at such addresses as may, from time to time, be filed with the Secretary. The committees shall select such other officers and adopt such rules for the conduct of their business as may be deemed advisable by them.

The members of the committees (including successors and alternates), and any agent or employee appointed or employed by the committees, shall be subject to removal or suspension by the Secretary at any time. Each and every order, regulation, decision, determination or other act of both committees shall be subject to the continuing right of the Secretary to disapprove of the same at any time and upon his disapproval shall be deemed null and void, except as to acts done in reliance thereon or in compliance therewith.

(g) **Control of funds and property.** All funds received by the Growers Industry Committee pursuant to any provision of this part shall be used solely for the purposes herein specified and shall be accounted for in the following manner:

The Secretary may, at any time, require the Growers Industry Committee and its members to account for all receipts and disbursements.

Upon the removal or expiration of the term of office of any member of the Growers Industry Committee, such member shall account for all receipts and disbursements and deliver all property and funds in his hands, together with all books and records in his possession to his successor in office, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in such successor full title to all of the property, funds or claims vested in such members pursuant to this part.*† [Art. II]

915.4 Expenses and assessments. The Growers Industry Committee is authorized to incur such expenses as the Secretary finds may be necessary to carry out the functions of both committees under this part during a designated fiscal period. The funds to cover such expenses shall be acquired by the levying of assessments upon handlers as hereinafter provided.

The Secretary shall fix the rate of assessment per standard packed box of oranges and grapefruit. Each handler shall pay to the Growers Industry Committee a sum of money equivalent to the product of the rate per standard packed box fixed by the Secretary and the total quantity of standard packed boxes of oranges and grapefruit shipped by the handler: Provided, That if the shipment of any of the fruit mentioned, i. e., oranges or grapefruit, is not regulated during the designated fiscal period, the Growers Industry Committee shall refund to the handlers who shipped the fruit not regulated a sum of money paid by such handlers on account of such fruit; Provided, further, That in the event the shipment of none of the fruit is regulated, a sufficient sum of money shall be retained to pay the expenses incurred in administering this part.

The Growers Industry Committee may require that each handler pay his assessment in advance of actual shipments on the basis of the quantity of fruit shipped by him during the last shipping season. The assessment levied pursuant to this section by the Growers Industry Committee shall be due and payable at such time or times, and in such installments, if any, as may be set by the Growers Industry Committee. In the event assessments are levied in advance of actual shipment, such assessments shall be adjusted at the end of the fiscal period so that the assessment shall be based on the actual quantity of fruit shipped by the handler during the fiscal period.

If at the end of the fiscal period it shall appear that assessments collected are in excess of expenses incurred, each handler entitled to a proportionate refund shall be credited with such refund against the operations of the following fiscal period, unless he demands payment of the sum due him, in which case such sum shall be paid to him.

At any time during or after the fiscal period, the Secretary shall have the power to increase the rate of assessment so that the sum of money collected pursuant to the provisions of this section shall be adequate to cover the expenses. Such increase shall be applied retroactively as well as to future shipments.*† [Art. III]

*†For statutory and source citations, see note to § 915.1.

915.5 Regulation of shipments—(a) Determination of period regulations and weekly shipments. It shall be the duty of the Shippers Marketing Committee and the Growers Industry Committee to investigate demand and supply conditions with respect to fruit. The Growers Industry Committee and the Shippers Marketing Committee shall, from time to time, recommend to the Secretary the establishment of a weekly regulation period or series of weekly regulation periods, as well as the time of commencement, duration, and termination thereof. All such recommendations shall be submitted by the Growers Industry Committee. The Growers Industry Committee shall give notice of the intention of the Shippers Marketing Committee and the Growers Industry Committee to meet to consider such recommendation by publishing a notice in a daily newspaper published in the principal place of business of the Growers Industry Committee and in one or more other daily newspapers of general circulation selected by it.

If upon the basis of such recommendation or other information available to the Secretary, the Secretary shall find that to establish a particular weekly regulation period or series of weekly regulation periods would tend to effectuate the declared policy of the act, he shall establish such weekly regulation period or series of weekly regulation periods, and he shall notify the Growers Industry Committee of the establishment thereof, as well as of the time of commencement, duration and termination thereof.

For each weekly regulation period the Shippers Marketing Committee shall find and determine the quantity of each variety of fruit deemed by it advisable to be shipped and to be prorated in view of the prospective demand in the market areas. In making such determination, the committee shall give due consideration to the following factors: (1) current market prices, (2) fruit on hand in the market areas, as evidenced by supplies in storage, enroute to, or on track at the principal markets, (3) available supply and condition of fruit in the production areas, (4) supplies from competitive areas producing citrus fruit and other competitive fruit, and (5) trend in consumer income. The Shippers Marketing Committee shall promptly report the finding and determination so made with supporting information to the Growers Industry Committee, which committee shall in turn submit the same to the Secretary together with its own recommendations. Notice of each meeting of the Shippers Marketing Committee held for the purpose of determining the weekly quantity to be shipped shall be published, not less than twenty-four (24) hours prior to the time set for such meeting, in a newspaper or newspapers of general circulation selected by the Growers Industry Committee.

(b) Application for allotment base and allotments. Persons, including growers, desiring to ship fruit in the current of interstate or foreign commerce shall apply for allotments and an allotment base, with respect to each variety of fruit. Each such person shall submit to the Growers Industry Committee, at such time or times as may be designated by the said committee, upon forms to be prepared by the said committee, a written application for allot-

ments and an allotment base, substantiated in such manner as may be prescribed in such application forms. Each such application shall include information specifying the quantities of (1) early season oranges, (2) valencia type oranges, and (3) grapefruit of all varieties shipped from Texas in interstate or foreign commerce by the applicant during each of the three years immediately preceding September 1st of the then current shipping season. Such application shall also include information specifying the quantity of each of the aforesaid varieties which the applicant then controls during the current shipping season by bona fide written agreements giving him authority to ship such fruit or which he controls by having legal title thereto and intends to ship to fresh fruit markets.

(c) **Allotment base either on past performance or current control basis.** Allotment bases shall be computed either on a past performance basis, as provided by paragraph (d), or on the basis of current control of fruit, as provided by paragraph (e). Unless the applicant advises the Growers Industry Committee, at the time of filing his application, that he desires that his allotment base be computed on the basis of his current control of fruit, the Growers Industry Committee shall compute his allotment base on the basis of his past performance.

(d) **Computation of allotment base on past performance.** For the purpose of arriving at an allotment base computed on a past performance basis, the Growers Industry Committee shall compute, from the application filed by the applicant, the three-year average quantity of each variety shipped by the applicant during the three years preceding September 1st of the then current shipping season which three-year period the Secretary finds is a representative period. The three-year average quantity so computed, as the same may be corrected or revised pursuant to the provisions of paragraph (f), shall be the allotment base for such applicant.

If an applicant for an allotment base, computed on a past performance basis, shipped fruit during only a portion of the three-year period preceding September 1st of the then current shipping season, the Growers Industry Committee shall, from the application filed by the applicant, compute the yearly average quantity of each variety shipped by the applicant during such portion of the aforesaid period as the applicant did ship. The yearly average quantity so computed, as the same may be corrected or revised pursuant to the provisions of paragraph (f), shall be the allotment base for such applicant. If an applicant for an allotment base is a new handler, the Growers Industry Committee shall compute an allotment base for him based upon his financial resources, packing facilities, quantity of fruit under control, trade outlets, and other relevant factors.

(e) **Computation of allotment base on current control.** For the purpose of arriving at an applicant's allotment base computed on a current control basis, the Growers Industry Committee shall, from the application and subsequent reports filed by the applicant at the request of the Growers Industry Committee, compute the quantity of each variety controlled by such applicant during the regulation period for which the allotment base is computed and which the applicant

intends to ship to fresh fruit markets. To ascertain the intention of an applicant to ship to fresh fruit markets the Growers Industry Committee shall give due regard to the past performance of the applicant. The quantity so computed, as the same may be corrected or revised pursuant to the provisions of paragraphs (f) and (h), shall be the allotment base of such applicant.

(f) **Corrections and revisions of allotment bases.** The Growers Industry Committee shall check the accuracy of the information set forth in the applications for allotment bases and of all other information filed by applicants for the purpose of obtaining allotments and allotment bases, and shall check the computations made pursuant to the provisions of this section. The Growers Industry Committee shall adjust allotment bases and allotments in such a manner as to eliminate the effect of any errors, omissions, inaccuracies and misstatements upon the total amount of shipments allotted each applicant for the entire shipping season with respect to each variety of fruit. Subject to the opportunity for applicants to be heard, under such rules as the Growers Industry Committee shall establish, the said committee shall correct any errors, omissions or inaccuracies found therein, by revising the same to conform to the check.

(g) **Reports and data to be furnished.** For the purpose of assisting the Growers Industry Committee in the performance of its duties under this section, each applicant shall furnish to the said committee such reports and other data as it may request, substantiated in such manner as the said committee may prescribe.

(h) **Notification as to allotment bases and applications for revisions of same.** Promptly after allotment bases shall have been computed, as above provided, and fixed by the Secretary, as hereinafter provided, each applicant shall be notified, in writing, by the Growers Industry Committee of the allotment base determined for him. Any applicant may, at any time, apply, in writing, to the said committee for the revision or correction of any allotment base determined for him, and may present evidence that the allotment base determined for him is incorrect or inequitable. In such case, the said committee shall, under such rules as it shall establish, afford such applicant a reasonable opportunity to be heard, and if the evidence reveals that such allotment base is inaccurate or inequitable, it shall correct such base. The said committee, upon its own initiative, subject to the opportunity of the person affected to be heard, may correct any allotment base if the evidence reveals such allotment base is inaccurate or inequitable.

(i) **Reports by the Growers Industry Committee to Secretary.** The Growers Industry Committee shall make written reports to the Secretary of its findings and determinations with regard to the allotment bases established pursuant to this section, or any change or revisions thereof.

(j) **Computation of group allotments.** The Growers Industry Committee shall compute for each week the portion of the total quantity of a variety of fruit found and determined pursuant to the provisions of paragraph (a) of this section which shall be allotted for such week to all applicants desiring allotments based on their

past performance and the portion of such total quantity of a variety of fruit to be allotted for such week to all applicants desiring allotments based on their current control in the following manner:

The portion of the total quantity of such variety of fruit to be allotted during each week to all applicants desiring allotments based on their current control shall be that portion which, in terms of percent, shall be equal to the percentage that the aggregate of the allotment bases, with respect to such variety of all such applicants is of the total quantity of the same variety then remaining available to be shipped.

The portion of the total quantity of a variety fruit to be allotted each week to all applicants desiring an allotment on a current control basis shall be deducted from the total quantity of a variety of fruit for the same week found and determined pursuant to the provisions of paragraph (a), and the remaining quantity shall be the aggregate quantity of fruit allotted for such week to all applicants receiving allotments based on their past performance.

The Growers Industry Committee shall promptly report to the Secretary the computations made by it with regard to the portions of the total quantity arrived at pursuant to the provisions of this paragraph.

(k) **Fixing of allotments by Secretary.** Upon receiving the reports from the Growers Industry Committee, made as required by paragraphs (a) (i) and (j), of this section the Secretary shall cause such reports to be examined, and if approved by him, he shall record such approval. The report of the total quantities, found and determined pursuant to the provisions of paragraph (a), so approved by him, shall thereupon become the basis for the total quantities of the varieties of fruit to be shipped by all applicants during the weekly regulation period included in such report. The reports showing the past performance base for each applicant desiring allotments on such basis and the portion of the total quantity allotted to all such applicants, and the current control allotment base for each applicant desiring allotments on such a basis and the portion of the total quantity allotted to all such applicants, so approved by the Secretary, for the weekly regulation period included in such report, shall be the basis for allotting the total quantity as between the two groups, the one receiving allotments on a past performance basis and the other on a current control basis, and for allotting the total weekly quantity among individual applicants, as hereinafter more specifically provided.

Thereupon the Secretary shall fix for such regulation period the allotment for each applicant who has applied for allotments, pursuant to paragraph (b), of this section, by signing a direction that (1) the allotment for each applicant desiring allotments on a past performance basis shall be that portion of the total quantity allotted to all such applicants, which expressed in terms of percent shall be equal to the percentage that each such applicant's allotment base is of the aggregate of the allotment bases of all such applicants, (2) the allotment for each applicant desiring allotments on a current control basis shall be that portion of the total quantity allotted to all such applicants,

which expressed in terms of percent shall be equal to the percentage that each such applicant's allotment base is of the aggregate of the allotment bases of all such applicants.

Whenever the Secretary has fixed an allotment for every applicant, as above provided, the Growers Industry Committee shall calculate the quantity thereof, in accordance with the provisions of this paragraph, in terms of standard packed boxes. The Growers Industry Committee shall notify each applicant of the allotment which has been fixed for him by the Secretary.

(l) **Over- and undershipments.** During any week in which the Secretary fixes allotments as hereinbefore provided, every applicant, for the purpose of providing flexibility in preparation of the fruit for market, may ship, during any week when not required to reduce shipments as provided in the following sentence, in addition to his allotment, a quantity not to exceed ten (10) percent of his allotment, or a quantity equivalent to the difference between one hundred standard packed boxes and such allotment: Provided, That no applicant shall, during any week, ship, by reason of the tolerance allowed by this paragraph, more than twenty percent of the total fruit under his control. The quantity of fruit shipped in excess of the allotment, and not exceeding the quantity permitted by the foregoing sentence, shall be offset by a reduction of an equal amount of his allotment for the next week in which proration is in effect, or if such weekly allotment be less than such permitted excess shipment, then such permitted excess shipment shall be deducted from succeeding weekly allotments until such excess shipment has been entirely offset. Any applicant shipping a quantity of fruit in excess of the allotment fixed for him by the Secretary and the quantity represented by loan transactions shall report such overshipment to the Growers Industry Committee within twenty-four (24) hours from the date thereof. If an applicant ships a quantity of fruit less than his allotment during any week, such applicant may ship, during the next week only in which such applicant is given an allotment, in addition to such allotment, a quantity equal to the undershipment: Provided, That such additional quantity shall not exceed twenty (20) percent of the total allotment of such applicant for the weekly regulation period during which the undershipment occurred: Provided further, That the applicant report the undershipment to the Growers Industry Committee within one (1) business day subsequent to the close of the weekly period when the undershipment occurred.

(m) **Lending of allotments.** Applicants may borrow allotments from one another: Provided, That an applicant borrowing an allotment agree to return to the lender an allotment at a later period during the same shipping season, in the same quantity, and covering the same variety of fruit. The lender and borrower shall report the loan transaction to the Growers Industry Committee at such time and in such manner as the said committee may prescribe.

(n) **Issuance of certificates.** The Growers Industry Committee may, subject to the approval of the Secretary, provide for the issuance of certificates by applicants holding allotments to persons who have no allotments and who purchase fruit from the applicants.

(o) Changing from past performance to current control basis. At any time during the shipping season of a variety of fruit, an applicant whose allotment base is computed on a past performance basis may, by informing the Growers Industry Committee, have his allotment base for the balance of such shipping season computed on a current control basis. Such change, however, may be effected only once during a shipping season of a variety of fruit.

(p) Shipment of fruit for byproduct use and export and charitable purposes. Subject to such rules and regulations as the Growers Industry Committee may establish in order to enable it to determine that such fruit will not enter fresh fruit trade channels in interstate or foreign commerce, any person may ship, free from any restriction or obligation imposed by this part, fruit that will be used solely for purposes of conversion into byproducts, or for unemployment relief or for charitable purposes, or for export to foreign countries other than Canada.

As used in this part, the term "byproduct" means and includes all processed and manufactured products of fruit and all products in the manufacturing or processing of which fruit is used, including canned or bottled fruits and juices; except that fruit shipped for conversion into juices without further processing or treatment to render the same a bona fide manufactured or processed product, as above described, shall be deemed fresh fruit subject to all regulations of such fruit herein contained and shall not be deemed fruit shipped for conversion.

(q) Equitable treatment of producers. Each handler shall, insofar as practical operations permit, divide his total allotments for each variety of fruit equitably among the producers for whom he ships such fruit.

(r) Obligation as to shipment by persons. During any week for which the Secretary fixes allotments for shipment of any variety of fruit, no person shall ship any such fruit without an allotment covering same, nor any quantity in excess of the allotment fixed for him, as such quantity may be increased or decreased by operation of the provisions of paragraph (m) dealing with loans of allotments, and reported and permitted over or under shipments provided for by paragraph (l).*† [Art. IV]

915.6 Regulation of grades and sizes—(a) Limitation of grade or size shipments. Whenever the Secretary shall find upon the basis of the recommendations of the Growers Industry Committee and of the Shippers Marketing Committee submitted to him by the Growers Industry Committee, or other available information, that to limit the shipment of a particular grade or grades, size or sizes of any variety or varieties of fruit would tend to effectuate the declared policy of the Act, he shall limit the shipment of such grade or grades, size or sizes of the variety or varieties of fruit during a specified period or periods. The Growers Industry Committee shall be informed of any such determination by the Secretary, and shall, in turn, notify all persons desiring to ship fruit in the current of interstate or foreign commerce by publication in a newspaper or newspapers of general circulation selected by the said committee.

*†For statutory and source citations, see note to § 915.1.

(b) Notice of meeting. The Growers Industry Committee shall give at least twenty-four (24) hours' notice of any meeting to consider the recommendation of an order limiting the total quantity of particular grades or sizes of fruit that may be shipped in the current of interstate or foreign commerce during any specified period or periods by publication in a newspaper or newspapers of general circulation selected by said committee, and no order pursuant to this section shall become effective sooner than twenty-four (24) hours after it has been issued by the Secretary.

(c) Exemptions. In the event the Secretary regulates the shipment of any variety of fruit in accordance with paragraph (a), thereupon whenever the Growers Industry Committee shall find that one-half ($\frac{1}{2}$) of the estimated crop of the same variety of fruit has been shipped or otherwise disposed of, it shall determine, with the approval of the Secretary, the percentage which has been actually shipped of the total crop of that variety and shall give notice of such fact and of the opportunity of producers to obtain exemption from the aforesaid regulation, by publication in a newspaper or newspapers of general circulation. Upon application by any producer, the Growers Industry Committee shall issue to such producer, a certificate if such producer proves that he has been unable, by reason of such grade or size regulation, to ship as large a portion of his crop of such variety as the percentage which the Growers Industry Committee has determined as aforesaid. Such certificate shall permit its holder to ship a stated quantity of the applicant producer's fruit of such variety, exempt from grade or size regulation made as provided by paragraph (a), such quantity to be equal to the percentage which the Growers Industry Committee has determined has been shipped, multiplied by such producer's total crop of that variety less the quantity of fruit of grades or sizes of the same variety the shipment of which is not subject to regulation under this section which the applicant producer has available for shipment and less the quantity of fruit of such variety which said producer has disposed of in any manner whatsoever.

(d) Obligation as to shipment by persons. Except as provided in §§ 915.5 (o) and 915.6 (c), no person shall ship fruit other than those grades and sizes or that portion of such grades and sizes which are permitted to be shipped in the current of interstate and foreign commerce by the Secretary pursuant to paragraph (a) of this section.*† [Art. V]

915.7 Effective time and termination. This part shall become effective at such time as the Secretary may declare above his signature attached hereto and shall continue in force, subject to termination as follows:

The Secretary may at any time terminate this part as to all parties thereto by giving at least one (1) day's notice by means of a press release or in any other manner which the Secretary may determine.

The Secretary shall terminate this part at the end of any crop year whenever he finds that such termination is favored by a majority of the producers of citrus fruit, who, during the preceding

crop year, have been engaged in the production for market of fruit, provided, that such majority have, during such period, produced for market more than fifty percent of the volume of such fruit produced for market, but such termination shall be effective only if announced on or before May 1.

This part shall in any event terminate whenever the provisions of the Act authorizing it cease to be in effect.*† [Art. VI, sec. 1]

915.8 Proceedings after termination. Upon the termination of this part the members of the Growers Industry Committee then functioning shall continue to function for the purpose of liquidating the affairs of the Growers Industry Committee and shall keep the funds and property then in their possession as members of such Growers Industry Committee including claims for any funds unpaid or property undelivered at the time of such termination. Said members (a) shall continue to function until discharged by the Secretary, (b) shall, from time to time, account for all receipts and disbursements or deliver all property on hand, together with all books and records of the Growers Industry Committee to such person or persons (who at the time of termination was or were a member or members of the Growers Industry Committee) as the Secretary may direct, and (c) shall, upon the request of the Secretary, execute such assignments or other instruments as may be necessary or appropriate to vest in such person or persons full title to all of the funds, property or claims vested in the Growers Industry Committee. Any funds collected pursuant to § 915.4 of this order, over and above amounts necessary to meet outstanding obligations and the expenses necessarily incurred during the operation of this part and during the liquidation period shall, as soon as practicable after the termination of this part, be returned to the handlers. The refund to each handler shall be represented by the excess of the amount paid by him over and above his pro rata share of the expenses.

Any person to whom funds, property or claims have been transferred or delivered by the members of the Growers Industry Committee upon direction of the Secretary as herein provided shall be subject to the same obligations and duties with respect to the said funds, property or claims as were hereinabove imposed upon the members of said committee.*† [Art. VI, sec. 2]

915.9 Duration of immunities. The benefits, privileges, and immunities conferred by virtue of this part shall cease upon its termination, except with respect to acts done under and during the existence of this part.*† [Art. VII]

915.10 Agents. The Secretary may, by designation in writing, name any person or persons, including any officer or employee of the Government, or name any Bureau or Division in the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this part.*† [Art. VIII]

915.11 Derogation. Nothing contained in this part is or shall be construed to be in derogation or in modification of the rights of the Secretary or of the United States (a) to exercise any power granted by the Act or otherwise, or (b) in accordance with such

*†For statutory and source citations, see note to § 915.1.

power to act in the premises whenever such action is deemed advisable.*† [Art. IX]

915.12 Liability of committee members or employees. No member of the Growers Industry Committee, nor any employee or agent thereof, nor any member nor employee of any other committee that may be appointed or created hereunder, shall be held personally responsible, either individually, or jointly with others, in any way whatsoever, to any handler or to any other person or persons for errors in judgment, mistakes, or other acts of commission or omission as such member or employees, except for acts of dishonesty.*† [Art. X]

915.13 Separability. If any provision of this part is declared invalid or the applicability thereof to any person, circumstance or thing is held invalid, the validity of the remainder of this part or the applicability thereof to any other person, circumstance or thing shall not be affected thereby.*† [Art. XI]

PART 916—CAULIFLOWER GROWN IN OREGON

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Section 916.1 Excerpt from findings. The Secretary, acting under the authority vested in him by section 8c of the Agricultural Adjustment Act (49 Stat. 753, 50 Stat. 246; 7 U.S.C., Sup., 608c), orders that such handling of cauliflower grown in the State of Oregon, as is in the current of interstate commerce, or which directly burdens, obstructs, or affects interstate commerce in such cauliflower, from and after July 23, 1937, shall be in conformity to and in compliance with the terms and conditions of this part.*† [Excerpt from findings]

*§§ 916.1 to 916.16, inclusive, issued under the authority contained in sec. 8c, 49 Stat. 753, 50 Stat. 246; 7 U.S.C., Sup., 608c.

†The sources of §§ 916.1 to 916.16, inclusive, is Order 16, Department of Agriculture, July 19, 1937, effective July 23, 1937. (Order Ser., AAA)

916.2 Definitions. (a) "Person" means an individual, partnership, corporation, association, and any other business unit.

(b) "Cauliflower" means and includes all varieties of cauliflower grown in and shipped from the State of Oregon.

(c) "To handle" or "to ship" means to convey or cause to be conveyed (but not as a common carrier for another person), to market, to consign, to deal in, or in any other way to put into the channels of trade in the current of interstate commerce, or so as directly to burden, obstruct, or affect interstate commerce.

(d) "Handler" means any person engaged in shipping, marketing, consigning, or dealing in cauliflower, either in person, or as or through an agent, broker, representative or otherwise, in the current of interstate commerce, or so as directly to burden, obstruct, or affect interstate commerce.

(e) "Season" means the twelve-month period beginning June 1 and ending May 31, both inclusive.

(f) "District" means and includes each of the following geographical areas:

(g) "Northern District"—consisting of that territory in the State of Oregon lying north of a line drawn due east and west across the State of Oregon, passing through the center of the city of Salem, Oregon;

(h) "Southern District"—consisting of that territory in the State of Oregon lying south of a line drawn due east and west across the State of Oregon, passing through the center of the city of Salem, Oregon.

(i) "Control Committee" means the control agency selected in accordance with the provisions of § 916.3.*† [Art. I]

916.3 Control Committee—(a) Names of members.

A control committee is hereby established consisting of thirteen (13) members. The initial members and their respective alternates shall be as follows:

(1) To represent cooperative handlers:

R. Yoshimura, as member; N. Toyooka, as alternate;
J. Uyetake, as member; B. Fujii, as alternate;
C. Taketa, as member; K. Nagaki, as alternate; and
Chick Peterson, as member; G. S. Sayriji, as alternate.

(2) To represent independent handlers:

Ross Phillippi, as member; John Frazier, as alternate;
George Akagi, as member; K. Kitamoto, as alternate;
Lee Martin, as member; Hugh Campbell, as alternate;
R. L. Butner, as member; James Locke, as alternate; and
F. S. Hamilton, as member; A. W. Baum, as alternate.

(3) To represent Northern District Growers:

Frank Spada, Portland, as member; George Spada, Portland, as alternate;
Frank Tanaka, Gresham, as member; Minoru Kobayashi, Boring, as alternate; and
Angelo Arata, Troutdale, as member; K. Nakamura, Portland, as alternate.

(4) To represent Southern District Growers:

T. B. Busenbark, Roseburg, as member; Scott Britt, Roseburg, as alternate.

*†For statutory and source citations, see note to § 916.1.

The members and their alternates named in this section shall hold office until their successors are selected and shall qualify.

(b) **Successor members.** The successors to the above-named members of the Control Committee and their respective alternates shall be selected by the Secretary from the respective nominees of cooperative handlers, independent handlers and growers chosen in the manner hereinafter provided, or from among such groups, respectively. Nominations for successors to the four (4) cooperative handler members and their respective alternates and nominations for the successors to the five (5) independent handler members and their respective alternates shall be by an election in which each cooperative handler and each independent handler shall be entitled to vote for their respective nominees. Voting at such an election shall be cumulative and each handler shall be entitled to one (1) vote for each car, or equivalent thereof, of cauliflower shipped by him during any one of the previous three (3) seasons. Nominations for successors to the three (3) Northern District grower members and their respective alternates and nominations for a successor to the one (1) Southern District grower member and his alternate shall be by an election to be held in each of the said districts, in which each grower shall be entitled to cast one (1) vote for each nominee to be chosen by his district. All member and alternate nominees shall be chosen before June 1 of each year. Not less than thirty (30) nor more than sixty (60) days preceding such date, the Control Committee shall schedule an election for the respective groups, notify the handlers and growers and supervise the making of nominations in accordance herewith.

(c) **Term of office.** Members of the Control Committee and their respective alternates subsequent to the members and alternates named in paragraph (a) shall be selected annually for a term of one year, beginning the first day of June, and shall serve until their respective successors shall be selected and shall qualify. Any person selected as a member or an alternate of the Control Committee shall qualify by filing a written acceptance of his appointment with the Secretary or his designated representative.

(d) **Vacancies.** To fill any vacancy occasioned by the death, removal, resignation or disqualification of any member of the Control Committee, a successor for his unexpired term shall be nominated in the manner specified in § 916.3 (b) within twenty (20) days after such vacancy occurs.

(e) **Organization.** The members of the Control Committee shall select a chairman from its membership. The Control Committee shall select such other officers and adopt such rules for the conduct of its business as it may deem advisable. The Control Committee shall give the Secretary or his designated agents and representatives the same notice of meetings of the committee as is given to members thereof.

(f) **Inability of members to serve.** An alternate for a member of the Control Committee shall act in the place and stead of such member (a) in his absence, or (b) in the event of his removal, resig-

nation, disqualification, or death until a successor for his unexpired term has been selected.

(g) Expenses. The members of the Control Committee shall serve without compensation, but shall be entitled to expenses necessarily incurred in the performance of their duties hereunder.

(h) Powers and duties. The Control Committee shall have the following powers and duties:

(1) To administer, as hereinafter specifically provided, the terms and provisions of this part; (2) to make, in accordance with the provisions hereinafter contained, administrative rules and regulations; (3) to receive, investigate, and report to the Secretary complaints of violations of this order; (4) to recommend to the Secretary amendments to this part; (5) to act as intermediary between the Secretary and the grower or handler; (6) to keep minute books and records which will clearly reflect all of its acts and transactions, which minute books and records shall at any time be subject to the examination of the Secretary; (7) to furnish to the Secretary such available information as he may request; (8) to appoint a manager and such other employees as it may deem necessary and to determine the salaries and define the duties of any such employees; (9) to perform such duties in connection with the administration of Section 32 of the Act to amend the Agricultural Adjustment Act, and for other purposes (49 Stat. 774, 1151; 7 U.S.C., Sup., 612c), as may from time to time be assigned to it by the Secretary; (10) to confer with handlers or growers of cauliflower grown in other areas with respect to the formulation or operation of orders providing for the regulation of shipments of cauliflower among the several areas where cauliflower is grown; and (11) to cause the books of the Control Committee to be audited by one or more competent accountants at least once for each season and at such other times as the Control Committee deems necessary or as the Secretary may request, and to file with the Secretary copies of all audit reports made.

(i) Voting procedure; removal or suspension of members. Any decision of the Control Committee shall be by the affirmative vote of not less than eight (8) members: Provided, however, That any decision made with respect to a regulation under § 916.4 or § 916.5 and affecting only one (1) district shall be by the grower members representing, and the handler members doing business in, such district and shall be by a majority vote of all such members. The members of the Control Committee (including successors and alternates), and any agent or employee appointed or employed by such committee, shall be subject to removal or suspension by the Secretary at any time. Each action of the Control Committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time, and upon such disapproval shall be deemed null and void, except as to acts done in reliance thereon or in compliance therewith.

(j) Funds and other property. All funds received by the Control Committee pursuant to any of the provisions of this part shall be used solely for the purposes herein specified and the Secretary may require the Control Committee and its members to account for all receipts and disbursements. The manager selected by the Control

Committee shall have charge of all books, records and other property of said committee. He shall act as secretary to all subcommittees which may be selected or appointed. Upon the death, resignation, removal or expiration of the term of office of any member of the Control Committee or of the manager, all books, records, funds and other property in his possession shall be delivered to the Control Committee or to his successor in office, and such assignments and other instruments shall be executed as may be necessary to vest in the Control Committee or his successor full title to all the books, records, funds and other property in the possession or under the control of such member or manager pursuant to this part.*† [Art. II]

916.4 Regulation by proration—(a) Recommendation for proration period. It shall be the duty of the Control Committee to investigate supply and demand conditions of cauliflower. Whenever such conditions make it advisable to regulate the shipment of cauliflower, the Control Committee shall recommend to the Secretary the establishment of a proration period during which the shipment of cauliflower may be regulated pursuant to this section. Such recommendations shall be made at a meeting of the said committee held at least twenty-four (24) hours prior to the time when it is proposed that the regulation shall be effective and the said committee shall promptly notify handlers and growers of such recommendations.

(b) Reports from handlers. Each handler desiring to ship cauliflower from a district for which a proration period is proposed shall, with respect to the cauliflower which he owns or has authority to ship and which he has available and intends to ship during such proposed period, report to the Control Committee the quantity of such cauliflower, the name of each owner or grower thereof and the quantity which he is authorized to ship for each such owner or grower. Reports shall be made at such time and in such manner as the Control Committee may prescribe. Each grower who has not given a handler authority to ship his cauliflower may make a similar report. During any such regulation period, any quantity of cauliflower prohibited from shipment pursuant to § 916.5 shall not be considered as available for shipment for the purposes of this section. The Control Committee shall verify, in such manner as it may determine, all reports filed pursuant to this paragraph and, with respect to the reports which are inaccurate, shall revise such reports to conform with the facts. Any handler or grower dissatisfied with his report as approved by the Control Committee may request the said committee to reconsider such report and thereafter may appeal, the Control Committee shall submit a report to the Secretary giving the action taken and the reasons therefor. Pending the disposition by the Secretary of such appeal, the petitioner shall abide by the determination of the Control Committee.

(c) Determination of quantity available for shipment. From the reports filed with the Control Committee pursuant to § 916.4 (b) thereof, as the same may be revised pursuant to § 916.4 (b), the said committee shall determine for each and all handlers the quantity of cauliflower available and intended for shipment from the district for

which a proration period is proposed. The Control Committee shall determine the total quantity of cauliflower which it deems advisable to be shipped from each district during a proposed proration period. In determining such advisable quantity, the said committee shall give consideration to the supply of cauliflower available from all producing areas and to the demand therefor.

(d) **Reports to the Secretary.** The Control Committee shall report to the Secretary the quantity of cauliflower available and the quantity advisable for shipment, as determined pursuant to paragraphs (b) and (c) of this section, as well as the facts upon which such determinations were made, and such additional information as the Secretary may request.

(e) **Establishment of proration period.** Based upon the recommendations made pursuant to paragraph (a) hereof and the reports submitted pursuant to paragraph (d), and upon any other information available, the Secretary shall, if he has reason to believe that the limitation of shipments of cauliflower will tend to effectuate the declared policy of the Act, establish for either or both districts a proration period regulating the shipment of cauliflower. The effective date, duration or termination of any proration period shall be given by the Secretary to the Control Committee by telegraph or in any other manner which the Secretary deems sufficient.

(f) **Determinations of allotments by the Secretary.** In the event the Secretary established a proration period as provided in paragraph (e) hereof, he shall upon the basis of the information contained in the reports submitted pursuant to paragraph (d) hereof, and upon such other information as may be available, determine for the district affected by the established proration period and for such period: the quantity of cauliflower which each handler has available and intends to ship; the total quantity of cauliflower which all handlers have available and intend to ship; and the total quantity of cauliflower advisable for shipment. The Secretary shall inform the Control Committee of the determinations made by him pursuant to the first sentence of this paragraph and the said committee shall calculate the allotment percentage for the district by dividing the total quantity of cauliflower advisable for shipment, as determined by the Secretary, by the total quantity of cauliflower which all handlers have available and intend to ship during the established proration period, as determined by the Secretary. The Control Committee shall multiply the quantity of cauliflower which each handler has available and intends to ship from the district during the established proration period, as determined by the Secretary, by the allotment percentage calculated pursuant to the second sentence of the paragraph, and the result thereof shall be the allotment fixed by the Secretary for each such handler. The Control Committee shall notify each handler of his allotment and of the allotment percentage. Each handler shall, with respect to the quantity of cauliflower represented by his allotment, equitably apportion such cauliflower among the owners and growers whose cauliflower he reported to the Control Committee pursuant to paragraph (b) as available and intended for shipment, by

applying the allotment percentage for the established proration period to such available supply of each owner and grower as determined by the Secretary.

(g) **Transfer of allotments.** Any handler to whom an allotment has been made may transfer such allotment, in whole or in part, to any other handler. The amount of the allotment transferred shall be deducted from the allotment of the transferor and added to the allotment of the transferee.

(h) **Over- and undershipments.** No handler shall ship cauliflower during any proration period without an allotment or in excess of his allotment, including allotments transferred to him pursuant to paragraph (g). Provided, however, That a shipment of less than one carload in excess of a handler's allotment shall not be a violation of this part if such overshipment is reported to the Control Committee by the handler within twenty-four (24) hours thereafter. The quantity of cauliflower shipped by a handler during any one proration period in excess of his allotment shall be offset by a reduction of an equal amount of cauliflower from his allotment for the succeeding proration period. If such allotment is less than the quantity of the overshipment, the excess shipment shall be deducted from succeeding allotments. A handler who ships less than his allotment for a proration period may, during the next succeeding proration period for which he has an allotment, ship a quantity of cauliflower equal to the quantity of such undershipment, in addition to his allotment: Provided, That such undershipment is reported to the Control Committee prior to such succeeding proration period and a request is made in writing for permission to ship the quantity of the undershipment.

(i) **Termination of proration period.** The Secretary shall terminate any proration period if the limitation of shipments is rendered unnecessary by reason of increased demand, reduction in available supply, or any other reason which would prevent the continuation of such regulation from effectuating the declared policy of the Act.*† [Art. III]

916.5 Regulation by grades and sizes—(a) Establishment of regulation and percentages for shipment. Whenever the Control Committee deems it advisable to regulate the shipment of any grade or size of cauliflower, it shall so recommend to the Secretary. In such event, the said committee shall furnish to the Secretary all data and information upon which such recommendation is predicated, including information with respect to the factors affecting the supply of and demand for cauliflower by grade and size. Based upon such recommendation and information furnished by the Control Committee, or upon such other information as may be available, the Secretary may regulate the quantity of any grade or size of cauliflower which may be shipped from a district during any period. Such regulation of shipments may be accomplished by prohibiting the shipment of certain grades or sizes of cauliflower, or a part thereof, during such period. When the Secretary determines to regulate shipments as provided herein, he shall immediately notify the Control Committee of such determination and the date of the commencement of

such regulation period, by telegraph or any other means which he deems advisable. The Control Committee shall immediately notify each handler affected thereby of (1) the institution of such regulation period; (2) the grades or sizes, or the portions thereof, which are prohibited from shipment; and (3) any other information that the Control Committee deems advisable under the circumstances. In the event a regulation period is established for a district pursuant to this section, the Control Committee shall determine the percentage which the cauliflower of the grades and sizes permitted to be shipped from such district is of the total quantity of cauliflower which could be shipped therefrom in the absence of such regulation, and shall immediately announce the result of such determination.

(b) **Exemption from regulation.** If any grower of cauliflower furnishes evidence to the Control Committee that the regulation of shipments by grade or size during any period will not permit the shipment of a percentage of his cauliflower during such period equal to the percentage determined for his district pursuant to paragraph (a) hereof, the said committee shall issue upon the request of such grower an exemption certificate which will permit the shipment of such a quantity of his cauliflower of the regulated grade or size as will make the percentage of his cauliflower that may be shipped equal to the percentage determined for his district. The Control Committee shall announce the procedure to be followed for the issuance of such exemption certificates. If any grower is dissatisfied with the decision of the Control Committee made with respect to his request for an exemption certificate, he may appeal to the Secretary. Nothing contained in this part shall be construed to authorize any limitation of the right to ship cauliflower for consumption by charitable institutions or distribution by relief agencies.*† [Art. IV]

916.6 Grading and inspection. During any regulation period established pursuant to § 916.5, all shipments of cauliflower from the district affected by such regulation shall be graded and certified on the basis of the grades of cauliflower promulgated by the United States Department of Agriculture and the Department of Agriculture of the State of Oregon, or as the same may be modified or changed hereafter. Each handler shall, with respect to each shipment of cauliflower during any such regulation period, file or cause to be filed with the Control Committee an inspection certificate or official memorandum thereof issued by the Federal-State Inspection Service showing the grade of each such shipment.*† [Art. V]

916.7 Assessments and expenses. The Control Committee is authorized to incur such expenses as the Secretary finds may be necessary to carry out its functions under this part. The funds to cover such expenses shall be secured by the levying of assessments as hereinafter provided. Each handler shall pay to the Control Committee, upon demand, such handler's pro rata share, as approved by the Secretary, of such general overhead expenses as the Secretary finds will be necessarily incurred by the said committee for its maintenance and functioning for both districts during a marketing season.

*†For statutory and source citations, see note to § 916.1.

Each handler who ships cauliflower from a district during a season when shipments from that district are regulated pursuant to § 916.4 or § 916.5, shall also pay to the Control Committee, upon demand, such handler's pro rata share, as approved by the Secretary, of such expenses as the Secretary finds will be necessarily incurred by the said committee in administering the aforesaid regulations during such season. A handler's pro rata share of the general administrative expenses for any season shall be that proportion thereof which the total quantity of cauliflower shipped by him during such season is of the total quantity of such cauliflower shipped by all handlers during such season. A handler's pro rata share of the expenses for any season, necessary in administering regulations established pursuant to § 916.4 or § 916.5 for a district, shall be that proportion thereof which the total quantity of cauliflower shipped by him from such district during the season is of the total quantity of cauliflower shipped by all handlers from such district during the season. In order to provide funds to carry out the functions of the said committee prior to the commencement of shipments in any season, handlers may make advance payments of assessments, which advance payments shall be credited to such handlers, and the assessments of such handlers shall be adjusted so that such assessments are based upon the quantity of cauliflower shipped by such handlers during such season. At the end of each season, the Control Committee shall credit each contributing handler with the excess of the amount paid by such handler above his pro rata share of the expenses, or debit such handler with the difference between his pro rate share and the amount paid by him. Any such debits shall become due and payable upon the demand of the Control Committee. From funds acquired pursuant to this section, the Control Committee shall pay the salaries of its employees, if any, and the expenses necessarily incurred, in the performance of its duties under this part.*† [Art. VI]

916.8 Reports. Upon the request of the Control Committee, and in accordance with forms of reports to be approved by the Secretary, each handler shall furnish, in such manner and at such times as said committee prescribes, such information as will enable the said committee to perform its duties under this part.*† [Art. VII]

916.9 Liability of Control Committee members or employees. No member of the Control Committee nor any employee thereof shall be held responsible individually in any way whatsoever to any handler or any other person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member or employee, except for acts of dishonesty.*† [Art. VIII]

916.10 Separability. If any provision of this part is declared invalid or the applicability thereof to any person, circumstances, or thing is held invalid, the validity of the remainder of this part or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.*† [Art. IX]

916.11 Derogation. Nothing contained in this part is or shall be construed to be in derogation or in modification of the rights of the Secretary or of the United States (a) to exercise any powers granted

by the Act or otherwise, or (b) in accordance with such powers to act in the premises whenever such action is deemed advisable.*† [Art. X]

916.12 Amendments. Amendments to this part may from time to time be proposed by the Control Committee.*† [Art. XI]

916.13 Duration of immunities. The benefits, privileges, and immunities conferred by virtue of this part shall cease upon its termination except with respect to acts done under and during the existence of this part, and benefits, privileges, and immunities conferred by this part upon any person shall cease upon its termination as to such party except with respect to acts done under and during the existence of this part.*† [Art. XIII]

916.14 Designation of agents. The Secretary may by a designation in writing name any person (not subject to this part), including any officer or employee of the Government, or any Bureau or Division in the Department of Agriculture to act as his agent or representative in connection with any of the provisions of this part.*† [Art. XIII]

916.15 Effective time and termination. This part shall become effective at such time as the Secretary may declare above his signature attached hereto, and shall continue in force until terminated in one of the ways hereinafter specified. The Secretary may at any time terminate this part by giving at least one (1) day's notice by means of a press release or in any other manner which the Secretary may determine. The Secretary shall terminate or suspend the operation of this part, or of any provision thereof, whenever he finds that this part, or such provisions thereof, does not tend to effectuate the declared policy of the Act. The Secretary shall terminate this part at the end of any marketing period whenever he finds that such termination is favored by a majority of the growers of cauliflower who during the preceding marketing period, have been engaged in the production for market of cauliflower in the area covered by this part: Provided, That such majority have during such period produced more than fifty (50) percent of the volume of such cauliflower produced within said area, but such termination shall be effective only if notice thereof is given on or before December 31 of such marketing period. This part shall in any event terminate whenever the provisions of the Act authorizing it cease to be in effect.*† [Art. XIV, secs. 1, 2]

916.16 Proceedings after termination. Upon the termination of this part, the members of the Control Committee then functioning shall continue as joint trustees, for the purposes of this part, of all funds and property then in the possession of or under the control of said Committee, including claims for any funds and property which are unpaid at the time of such termination. Said trustees shall continue in such capacity until discharged by the Secretary; shall account, from time to time, for all receipts and disbursements or deliver all funds and property on hand, together with all books and records of the Control Committee and of the joint trustees, to such person as the Secretary shall direct; and shall execute, upon the request of the Secretary, such assignments or other instruments necessary or appropriate to vest in such person, full title and right to all

*†For statutory and source citations, see note to § 916.1.

of the funds or claims vested in the Control Committee or the joint trustees pursuant to this part. Any funds collected pursuant to § 916.7, and held by such joint trustees or such person over and above the amount necessary to meet outstanding obligations and expenses necessarily incurred by the joint trustees or such other person in the performance of their duties hereunder, shall be returned as soon as practicable (after the termination of this part), to the handlers, pro rata, in proportion to their contributions made pursuant to this part. Any person to whom funds, property, or claims have been delivered by the Control Committee, or members thereof upon direction of the Secretary, as herein provided, shall be subject to the same obligations and duties with respect to said funds, property, or claims as are hereinabove imposed upon the members of said committee or upon said joint trustees.*† [Art. XIV, sec 3]

PART 920—MILK IN LA PORTE COUNTY, INDIANA, MARKETING AREA

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| 920.7 | Handlers who are also producers. | | |
| | (a) With respect to each handler who is also a producer. | | |

Section 920.1 Excerpt from findings. The Secretary, pursuant to the authority vested in him by section 8c of the Agricultural Adjustment Act (49 Stat. 753, 50 Stat. 246; 7 U.S.C., Sup., 608c), orders that such handling of milk in the La Porte County, Indiana, marketing area, as is in the current of interstate commerce, or which directly burdens, obstructs, or affects interstate commerce shall, from November 13, 1937, be in conformity to and in compliance with the following terms and conditions.*† [Excerpt from findings]

** §§ 920.1 to 920.14, inclusive, issued under the authority contained in sec. 8c, 49 Stat. 753, 50 Stat. 246; 7 U.S.C., Sup., 608c.

† The source of §§ 920.1 to 920.14, inclusive, is Order 20, Department of Agriculture, Nov. 9, 1937, effective Nov. 13, 1937. (Order Ser. AAA)

920.2 Definitions. The following terms shall have the following meanings:

(a) "Act" means Public Act No. 10, 73rd Congress (48 Stat. 31, 7 U.S.C. Chapter 26), as amended and as re-enacted and amended by the Agricultural Marketing Agreement Act of 1937 (50 Stat. 246).

(b) "Secretary" means the Secretary of Agriculture of the United States.

(c) "La Porte County, Indiana, marketing area," hereinafter called the "marketing area", means the territory within the boundaries of La Porte County which lies north of township 36 North and which is that part of township 36 North within a 6-mile radius of the city of La Porte.

(d) "Person" means any individual, partnership, corporation, association, and any other business unit.

(e) "Producer" means any person, irrespective of whether any such person is also a handler, who produces milk in conformity with the health requirements applicable for milk to be sold for consumption as milk in the marketing area.

(f) "Handler" means any person, irrespective of whether such person is a producer or an association of producers, wherever located or operating, who engages in such handling of milk, which is sold as milk or cream in the marketing area, as is in the current of interstate commerce or which directly burdens, obstructs, or affects interstate commerce.

(g) "Market Administrator" means the person designated pursuant to § 920.3 as the agency for the administration hereof.

(h) "Delivery period" means the current marketing period from the first to, and including, the last day of each month.

(i) "Base" means the quantity of milk calculated for each producer pursuant to § 920.8 (d).*† [Art. I]

920.3 Market Administrator—(a) Selection, removal, and bond. The Market Administrator shall be selected by the Secretary and shall be subject to removal by him at any time. The Market Administrator shall, within 45 days following the date upon which he enters upon his duties, execute and deliver to the Secretary a bond, conditioned upon the faithful performance of his duties, in an amount and with surety thereon satisfactory to the Secretary.

(b) Powers and duties. The Market Administrator shall have power and duty:

(1) To administer the terms and provisions hereof; and

(2) To receive, investigate, and report to the Secretary complaints of violations of the terms and provisions hereof; and

(3) Keep such books and records as will clearly reflect the transactions provided for herein;

(4) Submit his books and records to examination by the Secretary at any and all times;

(5) Furnish such information and such verified reports as the Secretary may request;

(6) Obtain a bond with reasonable security thereon covering each employee who handles funds entrusted to the Market Administrator; and

*†For statutory and source citations, see note to § 920.1.

(7) Publicly disclose to handlers and producers, unless otherwise directed by the Secretary, the name of any person, who, within 15 days after the date upon which he is required to perform such acts, has not made reports pursuant to § 920.6 or made payments pursuant to § 920.9.

(c) Responsibility. The Market Administrator, in his capacity as such, shall not be held responsible in any way whatsoever to any handler or any other person for errors in judgment, for mistakes, or for other acts either of commission or omission, except for his own willful misfeasance, malfeasance, or dishonesty.*† [Art. II]

920.4 Classification of milk—(a) Sales and use classification. Milk purchased or handled by handlers shall be classified as follows:

(1) All milk sold or distributed as milk, all milk used to produce cream for consumption as cream, and all milk not specifically accounted for as class II or class III milk shall be class I milk;

(2) All milk sold as flavored milk or milk drinks, buttermilk, cottage cheese, condensed milk, evaporated milk, powdered milk, and cream for the manufacture of ice cream shall be class II milk; and

(3) All milk specifically accounted for as being sold, distributed, or disposed of other than as class I or class II milk and as actual plant shrinkage within reasonable limits shall be class III milk.

(b) Interhandler and nonhandler sales. Milk sold by a handler to another handler, or to a person not a handler who distributes milk or manufactures milk products, shall be considered to be class I milk. In the event that such selling handler on or before the date fixed for filing reports pursuant to § 920.6 furnishes proof satisfactory to the Market Administrator that such milk has been sold or disposed of by such purchaser other than as milk, then, and in that event, such milk shall be classified in accordance with such proof.*† [Art. III]

920.5 Minimum prices—(a) Class I price. Each handler shall pay producers, in the manner set forth in § 920.9, for class I milk, at such handler's plant, not less than \$2.60 per hundredweight.

(b) Class II price. Each handler shall pay producers, in the manner as set forth in § 920.9, for class II milk, not less than that price per hundredweight calculated for each delivery period by the Market Administrator as follows: Multiply by 4 the average price per pound of 92-score butter at wholesale in the Chicago market as reported by the United States Department of Agriculture, for the delivery period during which such milk is purchased, and add 30 percent thereof.

(c) Class III price. Each handler shall pay producers, in the manner set forth in § 920.9 for class III milk, not less than that price per hundredweight calculated for each delivery period by the Market Administrator as follows: Multiply by 4 the average price per pound of 92-score butter at wholesale in the Chicago Market as reported by the United States Department of Agriculture, for the delivery period during which such milk is purchased, and add 10 percent thereof.*† [Art. IV]

920.6 Reports of handlers—(a) Periodic reports. On or before the 5th day after the end of each delivery period each handler shall, with respect to milk or cream which was, during such delivery period, received from producers, received from handlers, and produced by such handler, report to the Market Administrator, in the detail and form prescribed by him, as follows:

(1) The receipts at each plant from producers who are not handlers and the quantity of such receipts which represents the total of all milk delivered by producers in excess of their respective bases;

(2) The receipts at each plant from any other handler, including any handler who is also a producer;

(3) The quantity, if any, produced by such handler; and

(4) The respective quantities of milk which were sold, distributed, or used, including sales to other handlers, for the purpose of classification pursuant to § 920.4.

(b) Reports as to producers. Each handler shall report to the Market Administrator:

(1) Within 10 days after the Market Administrator's request, with respect to any producer for whom such information is not in the files of the Market Administrator, and with respect to a period or periods of time designated by the Market Administrator, the name and address, the total pounds of milk delivered, the average butterfat test of milk delivered, and the number of days upon which deliveries were made; and

(2) As soon as possible after first receiving milk from any producer, the name and address of such producer, the date upon which such milk was first received, and the plant at which such producer delivered milk.

(c) Reports of payments to producers. Each handler shall submit to the Market Administrator on or before the 20th day after the end of each delivery period his producer pay roll for such delivery period which shall show for each producer the net amount of such producer's payment with the prices, deductions, and charges involved, the total delivery of milk with the average butterfat test thereof, and the portion of such delivery which was in excess of the base of such producer.

(d) Verification of reports. In order that the Market Administrator may submit verified reports to the Secretary, pursuant to § 920.3 (b), each handler shall permit the Market Administrator or his agent, during the usual hours of business, to verify the information contained in reports submitted in accordance with this section, and weigh milk delivered by each producer and sample and test milk for butterfat.*† [Art. V]

920.7 Handlers who are also producers—(a) With respect to each handler who is also a producer. The Market Administrator shall, subject to the condition set forth in paragraph (b) of this section, exclude from the computations made pursuant to § 920.8 (a), the quantity of milk produced and sold, used, or distributed by such handler; Provided, that where any such handler has purchased milk from other producers the value of the milk so purchased shall be computed under § 920.8 (a), as follows: The quantity of such milk

*†For statutory and source citations, see note to § 920.1.

shall be ratably apportioned among such handler's total class I, class II, and class III sales (after excluding purchases, if any, from other handlers) and multiplied by the class I, class II, and class III prices, respectively.

(b) The Market Administrator shall, upon prior written notice from such handler of the exercise thereof, grant the option of having all milk produced by such handler included in the computation made pursuant to § 920.8 (a) in lieu of the provisions of paragraph (a) of this section.

(c) The Market Administrator shall consider as class III milk any milk or cream sold in bulk by any such handler, who has not exercised the option set forth in paragraph (b) of this section, to another handler operating a bottling or processing plant. If such buying handler uses or sells such milk or cream other than in class III the Market Administrator shall add to the total value computed for such buying handler pursuant to § 920.8 (a) the difference between the value of such milk or cream at the class III price and the value according to its actual usage.*† [Art. VI]

920.8 Determination of uniform prices to producers—(a) Computation of value of milk for each handler. For each delivery period the Market Administrator shall compute, subject to the provisions of § 920.7, the value of milk sold or used by each handler, which was not purchased from other handlers, by multiplying the quantity of such milk in each class by the price applicable pursuant to § 920.5 and adding together the resulting value of each class; Provided, That if milk, including skim milk, is sold by a handler to another handler and if such selling handler has not filed reports pursuant to § 920.6 (a) and made the payments required by § 920.9, the Market Administrator shall, in computing the value of milk for the purchasing handler, multiply the quantity of milk reported by the purchasing handler as purchased from such selling handler and classified as class I milk, by the difference between the class I and class II prices, and add the resulting sum to the value of milk otherwise computed pursuant to this paragraph.

(b) Computation and announcement of uniform prices. The Market Administrator shall compute for each handler and announce the uniform prices per hundredweight of milk delivered to such handler during each delivery period as follows:

(1) From the total value of milk computed for such handler pursuant to paragraph (a) of this section, subtract the sum obtained from multiplying by the class III price the total quantity of milk, if any, delivered by producers who did not regularly sell milk for consumption in the Marketing Area during a period of 30 days next preceding the effective date hereof;

(2) If the class I milk of such handler is greater than the base milk delivered to him by producers, subtract a sum equal to the base milk times the class I price;

(3) If the class I milk of such handler is less than the base milk delivered to him by producers subtract a sum equal to the excess milk times the class III price;

(4) Divide the remaining sum of money by the excess milk if subparagraph (2) be true or by the base milk if subparagraph (3) be true to secure the blended price for excess milk or for base milk, as the case may be; and

(5) On or before the 10th day after the end of each delivery period notify such handler and make public announcement of the uniform prices computed for him pursuant to this paragraph, and of the class II and class III prices.

(c) **Base rating.** The base of each producer shall be a quantity of milk for each delivery period calculated in the following manner; multiply the rating, if any, effective pursuant to paragraph (d) of this section, by the number of days on which such producer delivered milk during such delivery period. Milk delivered by a producer not in excess of his base shall be designated as "base milk" and that delivered in excess of his base shall be designated as "excess milk".

(d) **Determination for base rating.** For the purpose of calculating, pursuant to paragraph (c) of this section, the bases of producers, the Market Administrator shall determine a rating with respect to milk delivered in bulk by each producer to handlers as follows:

(1) Effective for the remainder of the calendar year 1937 the rating of each producer shall be the daily base, if any, of each such producer which is on file July 15, 1937, with the administrator of the order for the marketing area, issued by the Milk Control Board of the State of Indiana;

(2) Effective for each of the first three delivery periods following the effective date hereof, during which any producer delivers milk and for whom the reports of handlers do not supply information necessary for a determination of a rating pursuant to subparagraphs (1), (3) and (4) of this paragraph the rating of each such producer shall be that proportion of his milk delivered which is the proportion of the aggregate daily base milk to the aggregate daily delivery of milk of all other producers; effective for the remainder of the then current calendar year the rating of each such producer shall be the average of his ratings for each of such first three delivery periods: Provided, That ratings under this subparagraph shall not be effective for any producer during the period when handlers are required to make payment to any such producer pursuant to § 920.9 (a)(1);

(3) Effective for each year subsequent to 1937, divide the total deliveries in bulk to handlers during the four months of the preceding year when deliveries were lowest by the number of days on which deliveries were made and take such a percentage of the result as will make the total of all figures so determined approximately equal to 115 per cent of the average class I and class II milk per day sold during such preceding year by all handlers to whom such milk was delivered; and

(4) Effective for the remainder of the then current calendar year, in the case of any producer whose delivery of milk in bulk to handlers during any 2 consecutive delivery periods is less than 85 percent of

his base, that figure which is equal to the average delivery per day of such producer during such 2 consecutive delivery periods.*† [Art. VII]

920.9 Payments for milk—(a) Time and method of payment. On or before the 15th day after the end of each delivery period, each handler shall, with respect to milk purchased outside the State of Indiana or delivered to the handler's plant outside the State of Indiana during such delivery period, make payment to producers from whom such milk was purchased, subject to the butterfat differential set forth in paragraph (c) of this section, as follows:

(1) To any such producer who did not regularly sell milk during a period of 30 days next preceding the effective date hereof to a handler or to persons within the marketing area, at the class III price for all the milk delivered by such producer during the period beginning with the first regular delivery by such producer and continuing until the end of two full calendar months following the first day of the next succeeding calendar month; and

(2) To all other such producers, at the uniform prices per hundredweight for base milk and for excess milk as notified by the Market Administrator pursuant to § 920.8 (b).

(b) Errors in payments. Errors made from whatever cause in the payments prescribed in this section shall be corrected not later than the date for making payments next following the determination of such errors.

(c) Butterfat differential. If any producer has delivered to any handler during any delivery period milk having an average butterfat content other than 4 percent, such handler shall pay to each producer for each one-tenth of one percent of average butterfat content above 4 percent, or shall deduct for each one-tenth of one percent of average butterfat content below 4 percent, an amount per hundredweight as follows:

If the average butter price used in § 920.5 (b) is 29¢ or less—3¢.

If the average butter price used in § 920.5 (b) is 29.1¢ to 34¢—3.5¢.

If the average butter price used in § 920.5 (b) is 34.1¢ to 39¢—4¢.

If the average butter price used in § 920.5 (b) is over 39¢—4.5¢.*†

[Art. VIII]

920.10 Marketing services—(a) Deductions for marketing services. Except as set forth in paragraph (b) hereof, each handler shall deduct 3 cents per hundredweight from the payments made to each producer pursuant to § 920.9 (a) (1) and (2), with respect to all milk delivered to such handler during each delivery period by such producer, and shall pay such deductions to the Market Administrator on or before the 15th day after the end of such delivery period. Such monies shall be expended by the Market Administrator for market information to, and for verification of weights, sampling, and testing of milk purchased from the said producers.

(b) Producers' Cooperative Associations. In the case of producers for whom a cooperative association, which the Secretary determines to be qualified under the provisions of the Act of Congress of February 18, 1922 (42 Stat. 388; 7 U.S.C. 291–292), as amended

known as the "Capper-Volstead Act", is actually performing, as determined by the Secretary, the services set forth in paragraph (a) of this section, each handler shall make the deductions from the payments to be made pursuant to § 920.9 (a) (1) and (2), which are authorized by such producers and, on or before the 15th day after the end of each delivery period, pay over such deductions to the associations of which such producers are members.*† [Art. IX]

920.11 Effective time, suspension, and termination. The provisions hereof or any amendment hereto shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated pursuant to this section. Any or all provisions hereof or any amendment hereto shall be suspended or terminated as to any or all handlers after such reasonable notice as may be given by the Secretary, and shall, in any event, terminate whenever the provisions of the Act authorizing it cease to be in effect. Unless otherwise provided by the Secretary in the notice of amendment, suspension, or termination of any or all provisions hereof, the amendment, suspension, or termination shall not affect, waive, or terminate any right, duty, obligation, or liability which shall have arisen or may thereafter arise in connection with any provision hereof; release or waive any violation hereof occurring prior to the effective date of such amendment, suspension, or termination; or affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violation.*† [Art. X, secs. 1, 2, 3]

920.12 Continuing power and duty. If upon the suspension or termination of any or all provisions hereof there are any obligations arising hereunder, the final accrual or ascertainment of which requires further acts by any handler, by the Market Administrator, or by any other person, the power and duty to perform such further acts shall continue notwithstanding such suspension or termination; Provided, That any such acts required to be performed by the Market Administrator shall, if the Secretary so directs, be performed by such other person, persons, or agency as the Secretary may designate.

The Market Administrator or such other person as the Secretary may designate shall continue in such capacity until discharged by the Secretary; from time to time account for all receipts and disbursements and deliver all funds or property on hand, together with the books and records of the Market Administrator or such person, to such person as the Secretary shall direct; and if so directed by the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title to all funds, property, and claims vested in the Market Administrator or such person pursuant hereto.*† [Art. X, sec. 4]

920.13 Liquidation after suspension or termination. Upon the suspension or termination of any or all provisions hereof the Market Administrator or such person as the Secretary may designate shall, if so directed by the Secretary, liquidate the business of the Market Administrator's office and dispose of all funds and property then in his possession or under his control, together with claims for any

*†For statutory and source citations, see note to § 920.1.

funds which are unpaid and owing at the time of such suspension or termination. Any funds collected pursuant to the provisions hereof, over and above the amounts necessary to meet outstanding obligations and the expenses necessarily incurred by the Market Administrator or such person in liquidating and distributing such funds, shall be distributed to the producers in an equitable manner.*† [Art. X, sec. 5]

920.14 Liability. The liability of the handlers hereunder is several and not joint and no handler shall be liable for the default of any other handler.*† [Art. XI]

PART 921—CELERY GROWN IN FLORIDA

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Section 921.1 Excerpt from findings. The Secretary of Agriculture, acting under the authority vested in him by section 8c of the Agricultural Adjustment Act (49 Stat. 753, 50 Stat. 246; 7 U.S.C., Sup., 608c), orders that the handling of celery grown in the State of Florida, in the current of interstate or foreign commerce, or so as directly to burden, obstruct or affect interstate or foreign commerce in such celery, from and after November 13, 1937, shall be in conformity to, and in compliance with, the terms and conditions of this part.*† [Excerpt from findings]

*§§ 921.1 to 921.14, inclusive, issued under the authority contained in sec. 8c, 49 Stat. 753, 50 Stat. 246; 7 U.S.C., Sup., 608c.

†The source of §§ 921.1 to 921.14, inclusive, is Order 21, Department of Agriculture, Nov. 9, 1937, effective Nov. 13, 1937. (Order Ser. AAA)

921.2 Definitions. As used herein, the following terms have the following meanings:

(a) "Secretary" means the Secretary of Agriculture of the United States.

(b) "Act" means the Agricultural Marketing Agreement Act of 1937, approved June 3, 1937 (50 Stat. 246), re-enacting and amending certain provisions of Public No. 10, 73rd Congress (48 Stat. 31; 7 U.S.C. Chapter 26), as amended.

(c) "Person" means individual, partnership, corporation, association, or any other business unit.

(d) "Celery" means and includes all varieties of celery grown in the State of Florida.

(e) "Shipper" means any person engaged in shipping celery in the current of interstate or foreign commerce, or so as directly to burden, obstruct or affect interstate or foreign commerce.

(f) "To ship" means to handle for shipment in, to ship in, or in any other way to put celery in, the channels of trade by conveying or causing celery to be conveyed by railroad, truck, boat, or any other means whatsoever (but not as a common carrier of celery owned by another person), in the current of interstate or foreign commerce, or so as directly to burden, obstruct, or affect interstate or foreign commerce. "To ship" does not include the act of the grower in merely transferring ownership or title to a shipper.

(g) "Crate" means a standard Florida crate, inside dimensions ten by twenty by twenty-two (10 x 20 x 22) inches, or the equivalent thereof in edible celery.

(h) "Control Committee" means the Control Committee created pursuant to § 921.3.

(i) "Grower" means any individual (each member of a partnership), corporation, association, or any other business unit engaged in growing celery in the State of Florida, who or which has a financial interest in the crop.

(j) "Block" means that part of one field set at one time with celery of the same varietal characteristics.

(k) "Season" means the period of twelve (12) months beginning August 1 and ending July 31.

(l) "Sanford District" means that part of Seminole County lying north and west of the south line of Sections 25, 26, 27, 28, 29 and 30, Township 20 south, Range 29 east, and the south line of Sections 26, 27, 28, 29, and 30, Township 20 south, Range 30 east, and Lake Jesup; and the counties of Levy, Marion, Sumter, Lake, and Volusia, and all of the State of Florida lying north thereof.

(m) "Oviedo District" means that part of Seminole County not included in the Sanford District as described above and the counties of Orange, Osceola, Brevard, and Indian River.

(n) "Manatee District" means all of the counties of Manatee, Citrus, Hernando, Pasco, Hillsborough, Polk, Hardee, Highlands, Okeechobee, Pinellas, and St. Lucie.

(o) "Sarasota District" means the counties of Sarasota, De Soto, Glades, Martin, and all of the State of Florida lying south thereof.

(p) "Car" means 352 crates of celery.*† [Art. I]

921.3 Control Committee—(a) Membership and organization.
(1) A control committee is hereby established consisting of the

*†For statutory and source citations, see note to § 921.1.

following number of members and they and their respective alternates shall be selected from the following named districts:

Three (3) grower members and four (4) shipper members with an alternate for each from the Sanford District;

One (1) grower member and one (1) shipper member with an alternate for each from the Oviedo District;

Two (2) grower members and one (1) shipper member with an alternate for each from the Manatee District;

Two (2) grower members and one (1) shipper member with an alternate for each from the Sarasota District;

One (1) shipper member with his alternate from the combined Manatee and Sarasota Districts.

(2) (i) Grower members, and their respective alternates, for each district shall be selected by the Secretary from nominees elected by growers in that district or from growers in such district. Nominations shall be made on or before June 15th of each year (except in the year 1937, when nominations shall be made as soon as possible after the effective date of this part) in the following manner, and the number of nominees and places of election for each district shall be as follows:

Sanford District—six (6) persons to be nominated in an election held at the city of Sanford.

Oviedo District—two (2) persons to be nominated in an election held at the town of Oviedo.

Manatee District—four (4) persons to be nominated in an election held at the city of Bradenton.

Sarasota District—four (4) persons to be nominated in an election held at the city of Sarasota.

(ii) A grower may participate only in the elections held in the district in which he grows celery. Each grower shall be entitled to cast only one (1) vote at any such election, and no grower shall participate (in any one season) in elections held in more than one (1) district. The results of any such election, including the number of votes received by each nominee, shall be transmitted to the Secretary.

(3) Shipper members, and their respective alternates, for each district shall be selected by the Secretary from shippers in such district or from the respective nominees of groups designated to make nominations as follows:

(i) Each shipper who shipped five hundred (500) cars or more of celery during the current season (except 1937 when the season shall be the one just concluded) shall, on or before June 15th (except in the year 1937 when nominations shall be made as soon as possible after the effective date of this part), nominate two (2) persons (indicating preferences) for membership. From each such group of nominations the Secretary may select one (1) member and one (1) alternate. However, if there are more than three (3) 500-car shippers whose principal places of business are in the Sanford District, only the three (3) largest shall make nominations as hereinabove provided. If there is more than one (1) 500-car shipper whose

principal place of business is located in the Oviedo District, only the largest shall make nominations as hereinabove provided. If there is more than one (1) 500-car shipper whose principal place of business is located in the Sarasota District, only the largest shall make nominations as hereinabove provided. If there is more than one (1) 500-car shipper whose principal place of business is located in the Manatee District, only the largest shall make nominations as hereinabove provided.

(ii) Nominations for the remaining shipper members from each district, if any, shall be made by elections in which only shippers shall be entitled to participate. From each group of nominations made pursuant to this item, or from shippers in such district, the Secretary shall select one (1) member and one (1) alternate. In any such election, each shipper shall be entitled to cast but one (1) vote on behalf of himself, or his agents, partners, affiliates, subsidiaries, and representatives. The results of any such election, including the number of votes received by each nominee, shall be transmitted to the Secretary.

The (2) persons shall be nominated, at an election held in the city of Sanford, for each of the remaining members of the Control Committee for the Sanford District for which nominations have not been made pursuant to sub-item (i) of this item.

Two (2) persons shall be nominated, at an election held in the town of Oviedo, for the member for the Oviedo District for which nominations have not been made pursuant to sub-item (i) of this item.

Two (2) persons shall be nominated, at an election held in the city of Bradenton, for the member of the Manatee District for which nominations have not been made pursuant to sub-item (i) of this item.

Two (2) persons shall be nominated, at an election held in the city of Sarasota, for the member for the Sarasota District for which nominations have not been made pursuant to sub-item (i) of this item.

Two (2) persons shall be nominated, at an election held in the city of Sarasota, for the member for the combined Manatee and Sarasota Districts.

(4) Members of the Control Committee shall be selected annually for a term of one (1) year, beginning August 1, and shall serve until their respective successors shall be selected and shall qualify, except that those selected in the year 1937 shall hold office until August 1, 1938, and until their respective successors shall be selected and shall qualify. Each shipper shall participate only in the elections held in the district in which such shipper has his principal place of business, except that any shipper whose place of business is located in either the Manatee or Sarasota Districts may participate in the election of shipper nominees for the combined Manatee and Sarasota Districts. If any of the above groups fail to select nominees in the number above specified on or before June 15th, except in the year 1937 when selections shall be made as soon as

practicable after the effective date of this part, the Secretary may select, without nominations, the members and alternates for such group.

(b) **Alternates and successor members.** An alternate for a member of the Control Committee shall act in the place and stead of such member (1) in his absence, or (2) in the event of his removal, resignation, or disqualification, until a successor for his unexpired term has been selected.

To fill any vacancy occasioned by the removal, resignation, or disqualification of any member or alternate of the Control Committee, a successor for his unexpired term shall be selected, in the manner provided for in this section, within thirty (30) days after such vacancy occurs: Provided, however, That only one (1) nomination shall be made for each vacancy; and Provided, further, That nominations for the successor to any member or alternate previously selected by the Secretary from the nominations made by any 500-car shipper shall be made by such 500-car shipper. If nominations are not made within such thirty (30) days after such vacancy occurs, the Secretary may select a member to fill such vacancy without regard to nominations.

(c) **Powers and duties.** The Control Committee shall have the following powers and duties:

(1) To administer, as hereinafter specifically provided, the terms and provisions of this part;

(2) To make administrative rules and regulations in accordance with, and to effectuate the terms and provisions of, this part;

(3) To receive, investigate, and report to the Secretary complaints of violations of this part; and

(4) To recommend to the Secretary amendments to this part.

(5) To act as intermediary between the Secretary and any shipper or grower;

(6) To keep minute books and records which will clearly reflect all its acts and transactions, and such minute books and records shall at any time be subject to the examination of the Secretary;

(7) To investigate, from time to time, and assemble data on, the growing, shipping, and marketing conditions respecting Florida celery, and to furnish to the Secretary such available information as he may request;

(8) To negotiate, from time to time, with representatives of growers and shippers of celery produced in competing areas respecting the formulation of a marketing agreement and order, pursuant to the act, providing for coordinated regulation of celery shipments from such areas with celery shipments from Florida;

(9) To appoint subcommittees or additional committees to assist it in administering this part;

(10) To appoint such employees as it may deem necessary, and to determine the salaries and define the duties of such employees;

(11) To select a chairman and a vice-chairman, who must be members of the Control Committee, and a secretary and a treasurer, who need not be members of the Control Committee. The chairman and vice-chairman shall be elected by the Control Committee, one

(1) from the Sanford or Oviedo District and the other from the Manatee or Sarasota District. The secretary and treasurer shall be appointed by the Control Committee, and both offices may be filled by one (1) person. The treasurer shall give bond in an amount satisfactory to the Control Committee;

(2) To give the Secretary or his designated agent and representatives the same notice of meetings of the Control Committee as is given the members thereof;

(3) To perform such duties in connection with the administration of Section 32 of the Act to amend the Agricultural Adjustment Act, and for other purposes (49 Stat. 774, 1151; 7 U.S.C., Sup., 612c), as may from time to time be assigned to it by the Secretary; and

(4) To cause the books of the Control Committee to be audited by one or more competent accountants at least once for each season and at such other times as the Control Committee deems necessary or as the Secretary may request, and to file with the Secretary copies of all audit reports made.

(d) Voting procedure; removal or suspension of members. The Control Committee shall not perform any of its powers or duties herein prescribed while there are more than four (4) vacancies in its membership. A quorum shall consist of nine (9) members in attendance at the meeting, and all decisions of the Control Committee shall be by a majority vote of the members present.

The Control Committee may provide for simultaneous meetings of various groups of its members at designated places upon due notice to all members, and, after the groups have established telephone communication with loud speaker receivers for each group throughout the entire meeting, shall proceed with such meeting as if the Control Committee were assembled in one place. Actions taken by the Control Committee in this manner shall have the same force and effect as though an assembled meeting had been held.

The Control Committee may provide for voting by mail or telegraph upon due notice to all members, and when any proposition is submitted for voting by such method, nine (9) affirmative votes shall be necessary for its adoption.

The members of the Control Committee (including successors and alternates) and any agent or employee appointed or employed by the Control Committee shall be subject to removal or suspension by the Secretary at any time. Each and every regulation, decision, determination, or other act of the Control Committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time, and upon such disapproval, shall be deemed null and void except as to acts done in reliance thereon or in compliance therewith.

(e) Control of funds and property. All funds received by the Control Committee pursuant to any of the provisions of this part shall be used solely for the purpose herein specified and the Secretary may require the Control Committee and its members to account for all receipts and disbursements.

The officer designated by the Control Committee shall have charge of all books, records and other property of said committee. He shall act as secretary to all subcommittees which may be selected or ap-

pointed. Upon the death, resignation, removal or expiration of the term of office of any member of the Control Committee all books, records, funds and other property of the Control Committee in his possession shall be delivered to the Control Committee or to his successor in office, and such assignments and other instruments shall be executed as may be necessary to vest in the Control Committee or his successor full title to all the books, records, funds and other property in the possession or under the control of such member or officer pursuant to this part.

The Control Committee may, with the approval of the Secretary, maintain in its own name or in the names of its members a suit against any shipper subject hereto for the collection of such shipper's pro rata share of expenses.*† [Art. II]

921.4 Regulation by proration—(a) Recommendation for proration period. It shall be the duty of the Control Committee to investigate supply and demand conditions of celery. Whenever such conditions make it advisable to regulate the shipment of celery, the Control Committee shall recommend to the Secretary the establishment of a proration period, or series of proration periods, during which the shipment of celery may be regulated pursuant to this section. Such recommendations shall be made at a meeting of the Control Committee held at least two (2) days prior to the commencement of such recommended regulation period. The Control Committee shall promptly notify shippers and growers of such recommendation by giving notice in such manner as the Control Committee shall deem adequate under the circumstances. Such notice shall contain a direction to shippers and growers to make the applications required pursuant to paragraph (b) of this section. Based upon the recommendations made pursuant to this paragraph, or other information available to the Secretary, the Secretary may establish a prorate period or series of prorate periods, including the time of commencement, duration, and termination thereof, if the Secretary deems that such regulation of the flow of shipments of celery in the current of interstate or foreign commerce during any particular period or periods within the season would tend to effectuate the declared policy of the Act.

(b) Applications from shippers. Every shipper desiring to ship celery in the current of interstate or foreign commerce during any such prorate period shall make application to the Control Committee for allotments at such time and in such manner as the Control Committee shall determine. Each such application shall include information specifying:

The identification of each block of celery available for harvest; and an estimate of the number of crates of celery which will be available for shipment during such regulation period from each such block.

No shipper shall include in any such application the celery of any grower whose production such shipper does not own or have exclusive written authority to ship. Every grower who desires to ship celery in the current of interstate or foreign commerce during any such regulation period, and who has not given a shipper written

authority to handle such celery shipment, may make application in the manner set forth in this paragraph.

(c) Computation of quantity available for shipment. The Control Committee shall examine all applications submitted, and check the quantities of celery reported therein. The Control Committee shall correct any errors, omissions, or inaccuracies, or make such changes as it finds are necessary to bring the quantities reported into conformity with the results of the check. For this purpose the Control Committee shall employ as many competent representatives as it deems necessary, which representatives shall not be affiliated with or employed by any grower or shipper. From the applications filed pursuant to paragraph (b) hereof, corrected as herein provided, the Control Committee shall compute the quantity of celery available for shipment during such regulation period by each applicant making reports as hereinbefore provided, and the total quantity available for shipment by all applicants during such regulation period.

(d) Quantity advisable for shipment. For each regulation period established pursuant to paragraph (a), the Control Committee shall procure available evidence concerning (1) movement of Florida celery to market during previous weeks; (2) track holdings at principal destinations; (3) changes in seasonal demand; (4) prices for current and previous weeks at wholesale markets and shipping points; (5) returns to growers; (6) shipments of celery from competing states and shipments of competing vegetables; (7) supplies of Florida celery available for shipment, and the condition of such supplies; and (8) other pertinent market information, including opinions of experienced persons in the celery industry. From such evidence the Control Committee shall make a determination of the quantity of celery it deems advisable to be shipped during such regulation period. The evidence procured pursuant to this paragraph shall be transmitted to the Secretary together with such determination.

(e) Recommendations by Control Committee. The Control Committee shall calculate the recommended allotment percentage by dividing the quantity deemed advisable to be shipped, determined pursuant to paragraph (d), of this section, by the total quantity available for shipment, determined pursuant to paragraph (c). Such division shall be calculated to the nearest one-hundredth. The Control Committee shall calculate the recommended allotment of each applicant by applying the recommended allotment percentage to each applicant's supply of celery available for shipment, determined pursuant to paragraph (c). Thereupon, the Control Committee shall report to the Secretary its recommendations made pursuant to this paragraph, with its computations and determinations made pursuant to paragraphs (c) and (d) of this section. At least twenty-four (24) hours prior to the commencement of any proposed regulation period, the Control Committee shall notify each applicant of (1) the quantity of celery such applicant has available for shipment during such proposed regulation period, determined pursuant to paragraph (c), (2) the proposed allotment percentage determined pursuant to this

paragraph and (3) such applicant's proposed allotment determined pursuant to this paragraph.

(f) **Fixing of allotments by the Secretary.** (1) From the reports made pursuant to paragraph (e) of this section and other available information, the Secretary shall determine:

The total quantity of celery deemed advisable for shipment during such regulation period;

The quantity of celery available for shipment during such regulation period by each applicant making reports as hereinbefore provided; and

The total quantity of celery available for shipment during such regulation period.

(2) The Secretary shall advise the Control Committee of each determination made pursuant to this paragraph, and the Control Committee shall thereupon determine, in the manner hereinafter provided, the allotment percentage for such regulation period and the allotment for each applicant, and shall then notify every applicant of his allotment and the amount of same.

(3) The allotment percentage for such regulation period shall be the result of the division of the total quantity of celery advisable for shipment during such regulation period by the total quantity of celery available for shipment during such regulation period. Such calculation shall be made to the nearest one-hundredth.

(4) The allotment for each applicant shall be the product of such applicant's available quantity of celery for shipment during such regulation period and the allotment percentage for such regulation period.

(5) Every shipper shall apportion the quantity of celery represented by his allotment equitably among the growers whose celery he has exclusive authority, in writing, to ship (including celery produced by such shipper) by applying the allotment percentage for such regulation period to the available quantity for such grower.

(g) **Allotments to first shipper only.** Where a shipment of celery moves in a series of shipments through two or more shippers in the current of interstate or foreign commerce, allotments made pursuant to paragraph (f) shall be applicable to the first shipment of such celery; the subsequent shipments of any such celery shall be made without the issuance of additional allotments therefor to subsequent shippers: Provided, That such subsequent shippers ship only celery which was included within the allotment applicable to the first shipment of such celery, and such subsequent shippers furnish to the Control Committee such evidence of such shipment at such time as it may, with the approval of the Secretary, require.

(h) **Transfer of allotments.** Subject to such procedural rules and regulations as the Control Committee, with the approval of the Secretary, may prescribe, shippers to whom allotments have been made may transfer such allotments, in whole or in part. The amount of such transfer shall be deducted from the allotment of the transferor and added to the allotment of the transferee: Provided, That no transfer of allotment may be made when all of the celery from the

acreage upon which allotment has been granted has been harvested and a portion of such allotment remains unshipped. In such event the unshipped portion of such allotment shall revert to the Control Committee for cancelation.

(i) **Withdrawals.** No application for allotment shall include celery as available for shipment during such regulation period from any block of celery which has been previously included in an application for allotment, unless a new crop shall be matured on such block: Provided, however, That the Control Committee shall permit withdrawal of applications for allotments on blocks of celery which the Control Committee finds are not, in fact, available for shipment because (1) not sufficiently matured to warrant shipment; (2) mechanical conditions prevent shipment; (3) labor conditions prevent harvest; (4) weather conditions prevent harvest; (5) other conditions justify such withdrawal. Such blocks may be included in an application for an allotment in the next succeeding regulation period: Provided, further, That the allotment percentage for such withdrawn celery shall be five (5) percent less than the allotment percentage in effect at the time of harvest, and no such withdrawal shall be granted unless the request therefor is made before the time when the Control Committee meets to consider applications for allotments for the next succeeding regulation period.

(j) **Emergency allotments.** Upon verified application therefor, the Control Committee shall grant, subject to the approval of the Secretary, allotments to applicants on celery not included in applications filed pursuant to paragraph (b) of this section: Provided, That the Control Committee finds that the failure to ship such celery will result in serious damage thereto and consequent loss to the owner. The amount of such allotment shall be the product of such applicant's available quantity of celery, determined by the Control Committee, and an allotment percentage five (5) percent less than the allotment percentage determined for such regulation period pursuant to paragraph (f).

(k) **Overshipment.** No shipper shall ship celery during any regulation period in excess of the allotment fixed for him by the Secretary except for additional allotments granted or transferred to him pursuant to the foregoing provisions of this section: Provided, however, That overshipment not exceeding two (2) percent of such shipper's allotment fixed for him by the Secretary shall not be a violation of this part if not made for the purpose of taking advantage of marketing conditions; and Provided, further, That report of such overshipment is made to the Control Committee on or before the end of the prorate period.

(l) **Modification or cancelation of regulation period.** If the limitation of shipments during any regulation period is rendered unnecessary by reason of crop failure in any district, unforeseen increased demand, or other causes, the Secretary, or the Control Committee with the approval of the Secretary, may cancel or modify regulation of shipments. No such action by the Control Committee shall become effective until approved by the Secretary.

(m) Petitions for adjustments of applications for allotments. Any shipper or grower dissatisfied with the revision of his application by the Control Committee may request the said Committee to reconsider such revision, and may further appeal to the Secretary. In the event of such appeal to the Secretary, the Control Committee shall furnish a report to the Secretary setting forth the action taken and the reasons therefor. The parties involved shall abide by the determination of the Control Committee pending the disposition of such petition by the Secretary.

(n) Adjustment of allotments. Subsequent to the issuance of allotments, the Control Committee may, with the approval of the Secretary, adjust allotments in such a manner as to eliminate the effect of any errors, omissions, and inaccuracies in such allotments.

(o) Shipments for byproduct and relief purposes. The provisions of this section are not applicable to shipments of celery for conversion into byproducts, or for charitable or unemployment relief purposes, except that if any shipper makes shipments for these purposes, he shall report to the Control Committee the amount thereof, the person to whom shipped, and the purposes for which shipped.*† [Art. III]

921.5 Expenses and assessments. The Control Committee is authorized to incur such expenses as the Secretary finds may be necessary to carry out its functions under this part. The funds to cover such expenses shall be acquired by the levying of assessments as hereinafter provided.

Each shipper shall pay to the Control Committee upon demand such shipper's pro rata share, as is approved by the Secretary, of the expenses in the amount of \$24,640.00 (which amount the Secretary has found will necessarily be incurred by the Control Committee during the season ending July 31, 1938), or expenses in such other amount as the Secretary may later find will necessarily be incurred by the Control Committee during said season for the maintenance and functioning of the Control Committee during the said season as set forth herein. Each shipper's share of such expenses shall be that portion thereof which the total quantity of celery shipped by such shipper in the current of interstate or foreign commerce during said season is of the total quantity of celery shipped by all shippers in the current of interstate or foreign commerce during said season, and, such pro rata share is hereby approved by the Secretary. The present assessment upon each shipper shall be one cent per crate of celery shipped by such shipper in the current of interstate or foreign commerce. Said assessment may be adjusted from time to time by the Control Committee with the approval of the Secretary, in order to cover any later finding by the Secretary of estimated expenses, or the actual expense of the Control Committee during said season: Provided, however, That in no case shall the assessment be in excess of 1 cent per crate of celery shipped by such shipper in the current of interstate or foreign commerce. The assessment of each shipper for any season shall be due at such time and shall be payable in such installments, if any, as the Control Committee, with the approval of the Secretary, shall determine.

For seasons subsequent to the season ending July 31, 1938, every shipper shall pay to the Control Committee, upon demand, such shipper's pro rata share as is approved by the Secretary of such expenses as the Secretary may find will necessarily be incurred by the Control Committee for the maintenance and functioning of the Control Committee as set forth in this part: Provided, however, That in no case shall the assessment be in excess of 1 cent per crate of celery shipped by each shipper in the current of interstate or foreign commerce.

At the end of each season, the Control Committee shall credit each contributing shipper with the excess of the amount paid by such shipper above his pro rata share of the expenses, or debit such shipper with the difference between his pro rata share and the amount paid by such shipper. Any such debits shall become due and payable upon the demand of the Control Committee.

Members of the Control Committee shall serve without compensation as members, but shall be allowed their expenses necessarily incurred in the performance of their powers and duties hereunder.*† [Art. IV]

921.6 Reports. Upon the request of the Control Committee, made with the approval of the Secretary, every shipper shall furnish the Control Committee, in such manner and at such times as it prescribes, such information as will enable it to perform its powers and duties under this part.*† [Art. V]

921.7 Amendments. Amendments to this part may from time to time be proposed by the Control Committee.*† [Art. VI]

921.8 Agents. The Secretary may, by a designation in writing, name any person, including any officer or employee of the Government or any Bureau or Division in the Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this part.*† [Art. VII]

921.9 Effective time and termination. This part shall become effective at such time as the Secretary may declare above his signature attached hereto, and shall continue in force until terminated in one of the ways hereinafter specified.

The Secretary may at any time terminate this part.

The Secretary shall terminate this part at the end of any marketing season whenever he finds that such termination is favored by a majority of the growers, who during the preceding marketing period, have been engaged in the production for market of celery in Florida: Provided, That such majority have during such period produced more than fifty (50) percent of the volume of such celery produced within Florida, but such termination shall be effective only if notice thereof is given on or before July 1 of such marketing season.

This part shall, in any event, terminate whenever the provisions of the Act authorizing it cease to be in effect.*† [Art. VIII, secs. 1, 2]

921.10 Proceedings after termination. Upon the termination of this part, the members of the Control Committee then functioning shall continue as joint trustees, for the purpose of administering this

*†For statutory and source citations, see note to § 921.1.

part of all funds and property then in the possession or under the control of the Control Committee, including claims for any funds unpaid or property not delivered at the time of such termination. Said trustees (a) shall continue in such capacity until discharged by the Secretary; (b) shall from time to time account for all receipts and disbursements and deliver all funds and property on hand, together with all books and records of the Control Committee and the joint trustees, to such person as the Secretary shall direct; and (c) shall, upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title to all of the funds and claims vested in the Control Committee or the joint trustees pursuant to this part. Any funds collected for expenses pursuant to § 921.5 and held by such joint trustees or such person over and above amounts necessary to meet outstanding obligations and the expenses necessarily incurred by the joint trustees or such other person in the performance of their duties hereunder, shall, as soon as practicable after the termination of this part, be returned to the shippers pro rata in proportion to their contributions made thereto pursuant to this part.

Any person to whom funds, property or claims have been delivered by the Control Committee or its members upon direction of the Secretary as herein provided shall be subject to the same obligations and duties with respect to said funds, property or claims as are hereinabove imposed upon the members of said Committee or upon said joint trustees.*† [Art. VIII, sec. 3]

921.11 Duration of immunities. The benefits, privileges, and immunities conferred by virtue of this part shall cease upon its termination except with respect to acts done under and during the existence of this part, and benefits, privileges, and immunities conferred by this order upon any party shall cease upon its termination as to such party except with respect to acts done under and during the existence of this part.*† [Art. IX]

921.12 Separability. If any provision of this part is declared invalid or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this part or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.*† [Art. X]

921.13 Derogation. Nothing contained in this part is or shall be construed to be in derogation or in modification of the rights of the Secretary or of the United States (a) to exercise any powers granted by the Act or otherwise, and (b) in accordance with such powers, to act in the premises whenever such action is deemed advisable.*† [Art. XI]

921.14 Liability of Control Committee members. No member of the Control Committee nor any employee thereof shall be held liable individually in any way whatsoever to any person for errors in judgment, mistakes, or other acts either of commission or omission as such member or employee, except for acts of dishonesty.*† [Art. XII]

PART 922—MILK IN CINCINNATI, OHIO, MARKETING AREA

| Sec. | Sec. |
|--|--|
| 922.1 Excerpt from findings. | 922.7 Determination and announcement of values and prices. |
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| (c) Computation of butterfat in each class. | (a) Effect of amendment, suspension, or termination. |
| (d) Computation of milk in each class. | (b) Power of the Market Administrator to liquidate. |
| 922.6 Prices. | 922.12 Liability of handlers. |
| (a) Class prices. | |
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Section 922.1 Excerpt from findings. The Secretary of Agriculture, pursuant to the authority vested in him by section 8c of the Agricultural Adjustment Act (49 Stat. 753, 50 Stat. 246; 7 U.S.C., Sup., 608c), hereby orders that such handling of milk produced for sale in the Cincinnati, Ohio, marketing area, as is in the current of interstate commerce or which directly burdens, obstructs, or affects interstate commerce, shall, from May 1, 1938, be in conformity to and in compliance with the following terms and conditions.*† [Excerpt from findings]

*§§ 922.1 to 922.12, inclusive, issued under the authority contained in sec. 8c, 49 Stat. 753, 50 Stat. 246; 7 U.S.C., Sup., 608c.

†The source of §§ 922.1 to 922.12, inclusive, is Order 22, Department of Agriculture, Apr. 27, 1938, effective May 1, 1938. (Order Ser., AAA)

922.2 Definitions. The following terms shall have the following definitions:

(a) "Secretary" means the Secretary of Agriculture of the United States.

(b) "Cincinnati marketing area", hereinafter called the "marketing area", means the city of Cincinnati, Ohio, and the territory included within the boundary lines of Hamilton County, Ohio.

(c) "Person" means any individual, partnership, corporation, association, and any other business unit.

(d) "Producer" means any person who, in conformity with the health regulations, as applied and enforced by the proper authorities, with respect to milk which is sold for consumption in the form of milk in the marketing area, produces milk and delivers it to a handler: Provided, That if such producer has not regularly distributed milk in the marketing area or sold milk to a handler for a period of

30 days prior to the effective date hereof, but thereafter begins the regular delivery of milk to a handler, he shall be known as a "new producer" during the first two full calendar months after deliveries are first made to a handler, after which he shall be known as a producer.

(e) "Handler" means any person who purchases or receives milk from producers, associations of producers, or other handlers, all, or a portion, of which milk is sold in the marketing area, and who, on his own behalf or on behalf of others, engages in such handling of milk as is in the current of interstate commerce or which directly burdens, obstructs, or affects interstate commerce in milk and its products.

(f) "Delivery period" means any calendar month.*† [Art. I]

922.3 Market Administrator—(a) Designation. The agency for the administration hereof shall be a market administrator who shall be a person selected by the Secretary. Such person shall be entitled to such compensation as may be determined by, and shall be subject to removal at the discretion of, the Secretary.

(b) **Powers and duties.** The Market Administrator shall:

- (1) Administer the terms and provisions hereof;
- (2) Report to the Secretary complaints of the violations of the provisions hereof;

(3) Within 45 days following the date upon which he enters upon his duties, execute and deliver to the Secretary a bond, conditioned upon the faithful performance of his duties, in an amount and with surety thereon satisfactory to the Secretary;

(4) Pay out of the funds provided by § 922.10 the cost of his bond, his own compensation, and all other expenses which the Secretary finds will be necessarily incurred in the maintenance and functioning of his office;

(5) Keep such books and records as will clearly reflect the transactions provided for herein, and surrender the same to his successor or to such other person as the Secretary may designate;

(6) Publicly disclose to handlers and producers, unless otherwise directed by the Secretary, the name of any person who, within 2 days after the date upon which he is required to perform such acts, has not made reports pursuant to § 922.4 or made payments pursuant to §§ 922.8, 922.10; and

(7) Promptly verify the information contained in the reports submitted by handlers.*† [Art. II]

922.4 Reports of handlers—(a) Submission of reports. Each handler shall report to the Market Administrator, in the detail and form prescribed by the Market Administrator, as follows:

(1) On or before the 10th day after the end of each delivery period, (i) the receipts of milk at each plant from producers and new producers, (ii) the receipts of milk at each plant from handlers, (iii) the receipts at each plant of the milk, if any, produced by him, (iv) the utilization of all receipts of milk for the delivery period, and (v) the name and address of each new producer.

(2) Within 10 days after the Market Administrator's request with respect to any producer and new producer for whom such informa-

tion is not in the files of the Market Administrator and with respect to a period or periods of time designated by the Market Administrator (i) the name and address, (ii) the total pounds of milk delivered, (iii) the average butterfat test of milk delivered, and (iv) the number of days upon which deliveries were made.

(3) On or before the 10th day after the end of each delivery period, his producer pay roll, which shall show for each producer and new producer (i) the total delivery of milk with average butterfat test thereof, (ii) the amount of the advance payment to such producer and new producer made pursuant to § 922.8 (a), and (iii) the deductions and charges made by the handler.

(b) **Verification of reports.** Each handler shall make available to the Market Administrator or his agent (1) those records which are necessary for the verification of the information contained in the reports submitted in accordance with this section, and (2) those facilities which are necessary for the sampling and weighing of the milk of each producer and new producer.*† [Art. III]

922.5 Classification of milk—(a) Class definitions. Milk received by each handler, including milk produced by him, if any, shall be classified by the Market Administrator as follows:

(1) Class I milk shall be all milk sold or given away in the form of milk or milk drinks, whether plain or flavored, and all milk not accounted for as class II or class III milk.

(2) Class II milk shall be all milk used to produce cream (for consumption as cream), creamed buttermilk, and creamed cottage cheese.

(3) Class III milk shall be all milk accounted for (i) as actual plant shrinkage but not to exceed $2\frac{1}{2}$ percent of total receipts of milk, and (ii) as used to produce a milk product other than one of those specified in class II.

(b) **Interhandler and nonhandler sales.** Milk sold by a handler to another handler or to a person who is not a handler but who distributes milk or manufactures milk products, shall be class I milk: Provided, That if the selling handler on or before the 10th day after the end of the delivery period furnishes to the market administrator a statement, which is signed by the buyer and seller, that such milk was used in class II or class III, such milk shall be classified accordingly, subject to verification by the Market Administrator.

(c) **Computation of butterfat in each class.** For each delivery period, the Market Administrator shall compute for each handler the butterfat in each class, as set forth in paragraph (a) of this section, as follows:

(1) Determine the total pounds of butterfat received as follows: (i) Multiply the weight of the milk received from producers and new producers by the average butterfat test, (ii) multiply the weight of the milk produced by him, if any, by the average butterfat test, (iii) multiply the weight of the milk received from handlers, if any, by the average butterfat test, and (iv) add together the resulting amounts.

(2) Determine the total pounds of butterfat in class I milk as follows: (i) Convert to quarts the quantity of milk or milk drinks,

*†For statutory and source citations, see note to § 922.1.

whether plain or flavored, sold or given away in the form of milk, and multiply by 2.15, (ii) multiply the result by the average butterfat test of such milk; and (iii) if the quantity of butterfat so computed when added to the pounds of butterfat in class II and class III milk computed pursuant to subparagraphs (3) and (4) of this paragraph is less than the total pounds of butterfat received, computed in accordance with subparagraph (1) of this paragraph, an amount equal to the difference shall be added to the quantity of butterfat determined pursuant to (ii) of this subparagraph (2).

(3) Determine the total pounds of butterfat in class II milk as follows: (i) Multiply the actual weight of the several products of class II milk by the average butterfat test and (ii) add together the resulting amounts.

(4) Determine the total pounds of butterfat in class III milk as follows: (i) Multiply the actual weight of the several products of class III milk by the average butterfat test, (ii) multiply the weight of a quantity of milk equal to the plant shrinkage, which shall not exceed 2½ percent of total receipts, by the average butterfat test of milk received, and (iii) add together the resulting amounts.

(5) Determine the classification of the butterfat received from producers and new producers, as follows:

(i) Subtract from the total pounds of butterfat in each class the total pounds of butterfat which were received from other handlers and used in such class.

(ii) In the case of a handler who also distributes milk of his own production, subtract from the total pounds of butterfat in each class a further amount which shall be computed as follows: Divide the total pounds of butterfat in said class by the total pounds of butterfat in all classes and multiply by the total pounds of butterfat produced by him.

(d) Computation of milk in each class. For each delivery period, the market administrator shall compute for each handler the hundredweight of milk in each class, which was received from producers and new producers and to which the prices set forth in § 922.6 apply, as follows: Divide the total pounds of butterfat computed for each class in accordance with § 922.5 (c) (5) by the average test of all milk received from producers and new producers by such handler.*† [Art. IV]

922.6 Prices—(a) Class prices. Each handler shall pay at the time and in the manner set forth in § 922.8 not less than the following prices for milk delivered at the handler's plant on the basis of milk of 4 percent butterfat content as follows:

Class I milk—\$2.75 per hundredweight: Provided, That where class I milk is delivered to the residence of a relief client and paid for by a recognized relief agency the price shall be \$2.15 per hundredweight, and Provided further, That where class I milk is sold outside the marketing area, the price shall be that which the market administrator ascertains is being paid to farmers for milk of equivalent use in the market where such milk is sold, subject to a reasonable adjustment on account of transportation from the plant where such

milk is received from producers to the plant where such milk is loaded on wholesale and retail routes.

Class II—\$2.00 per hundredweight.

Class III milk—The price per hundredweight which shall be calculated by the Market Administrator as follows: Multiply by 4 the average price per pound of 92-score butter at wholesale in the Chicago market, as reported by the United States Department of Agriculture for the delivery period during which such milk is delivered, and add 30 percent thereof: Provided, That for a quantity of class III milk not to exceed 10 percent of the class I and class II milk delivered by producers and new producers the price shall be the average price per pound of 92-score butter at wholesale in the Chicago market, as reported by the United States Department of Agriculture for the delivery period during which such milk is delivered, plus 3 cents, multiplied by 4.

(b) Computation of value of milk for each handler. For each delivery period, the Market Administrator shall compute the value of milk which each handler has received from producers, new producers, or an association of producers as follows:

(1) Multiply the hundredweight of milk in each class, computed in accordance with § 922.5 (d), by the respective class price for 4-percent milk: Provided, That, if the average butterfat test of milk received from producers by such handler is more than 4 percent, there shall be added to the respective class I and class II prices for 4-percent milk, 4 cents per hundredweight, and to the class III price for 4-percent milk, there shall be added an amount equal to $\frac{1}{40}$ of the class III price for each $\frac{1}{10}$ of 1 percent of average butterfat content above 4 percent; and, if the average butterfat content of milk received from producers by such handler is less than 4 percent, there shall be subtracted from the class I and class II prices for 4-percent milk, 4 cents per hundredweight, and from the class III price for 4-percent milk there shall be subtracted an amount equal to $\frac{1}{40}$ of the class III price, for each $\frac{1}{10}$ of 1 percent of average butterfat content below 4 percent.

(2) Add together the resulting amounts.

(3) If, in the verification of reports from handlers, the Market Administrator discovers errors in the reports submitted by any handler or errors in payments to producers or new producers for any previous delivery periods, there shall be added or subtracted, as the case may be, the amount of money necessary to correct any such errors.

(c) Notification to each handler of value of milk. On or before the 13th day after the close of each delivery period, the Market Administrator shall bill each handler for the value of milk computed in accordance with paragraph (b) of this section.*† [Art. V]

922.7 Determination and announcement of values and prices—

(a) Computation of uniform price. The Market Administrator shall compute the uniform price per hundredweight of milk delivered during each delivery period as follows:

(1) Add together values of milk, as computed in § 922.6 (b) for each handler who made the payments required by § 922.8.

*†For statutory and source citations, see note to § 922.1.

(2) Subtract from this sum the total amount to be paid pursuant to § 922.9 (a) (2).

(3) Subtract, if the average test of all milk is greater than 4 percent butterfat, or add, if the average test of such milk is less than 4 percent, an amount computed as follows: Multiply the total hundredweight of milk by the variance of such average test from 4 percent, and multiply the resulting amount by \$0.40.

(4) Add the cash balance, if any, in the settlement fund.

(5) Divide by the total hundredweight of milk received from producers other than the milk represented by the amount subtracted in subparagraph (2) of this paragraph.

(6) Subtract the fraction of a cent, if any.

(b) **Announcement of price.** On or before the beginning of the following delivery period, the Market Administrator shall notify each handler of the uniform price for milk and of the price for milk delivered by new producers and shall make public announcement of the computation of the uniform price.*† [Art. VI]

922.8 Payments for milk—(a) Payment to producers. On or before the fifth day after the end of each delivery period, each handler shall pay each producer and new producer, from whom he has received milk, \$1.00 per hundredweight for all milk delivered during the delivery period.

(b) **Payment to producer-settlement fund.** On or before the 17th day after the end of each delivery period, each handler shall pay to the Market Administrator a check in the amount of the value of milk billed to him for said delivery period, pursuant to § 922.6 (c), less the amount paid out in accordance with paragraph (a) of this section, and less the amount of the deductions, and charges itemized on his producer pay roll. The Market Administrator shall maintain a separate fund known as the producer-settlement fund, in which he shall deposit all checks of handlers received pursuant to this paragraph.*† [Art. VII]

922.9 Payments to producers from producer-settlement fund—(a) Calculation of payments for each producer. For each delivery period the Market Administrator shall calculate the payment due each producer and new producer who delivered milk during said delivery period to a handler, who paid into the producer-settlement fund in accordance with § 922.8, as follows:

(1) Multiply the hundredweight of milk delivered by each producer by the uniform price computed in accordance with § 922.7 (a); Provided, That if such milk is of an average butterfat content other than 4 percent, there shall be added or subtracted for each one-tenth of 1 percent variance above or below 4 percent, 4 cents per hundredweight;

(2) Multiply the total hundredweight of milk delivered by each new producer during said delivery period by the class III price; Provided, That if such milk is of an average butterfat content other than 4 percent, there shall be added or subtracted for each $\frac{1}{10}$ of 1 percent variance above or below 4 percent, an amount per hundredweight equal to $\frac{1}{40}$ of the class III price;

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(3) Subtract, in each case, the amount of the advance payment made pursuant to § 922.8 (a), the charges and the deductions, if any, which have been made by the handler against each producer and new producer.

(b) **Payments.** On or before the 20th day after the end of each delivery period, the Market Administrator shall pay to each cooperative association, authorized to receive payments due producers who market their milk through such association, or to an agent designated by such cooperative to receive such payments, the aggregate of payments calculated pursuant to paragraph (a) of this section, for all producers and new producers certified to the Market Administrator by such association as having authorized such association to receive such payments, and shall pay direct to each producer and new producer who has not been certified as having authorized such association to receive such payments the amount of the payment calculated pursuant to paragraph (a) of this section.*† [Art. VIII]

922.10 Expenses of administration; payment by handlers. As his pro rata share of the expenses which the Secretary finds will be necessarily incurred in the maintenance and functioning of the office of the Market Administrator, each handler shall, with respect to all milk received from producers and new producers or produced by him during the delivery period, pay to the Market Administrator on or before the 17th day after the end of each delivery period that amount per hundredweight, subject to review by the Secretary and not to exceed 2 cents per hundredweight, which is announced on or before the 13th day after the end of each delivery period by the Market Administrator.*† [Art. IX]

922.11 Amendment, suspension, and termination—(a) Effect of amendment, suspension, or termination. The amendment, suspension, or termination of any or all of the provisions of this part shall not affect, waive, or terminate any right, duty, obligation, violation, or liability which shall have arisen, or may thereafter arise, in connection with any of the provisions herein.

(b) **Power of the Market Administrator to liquidate.** Upon the suspension or termination of this part, the powers and duties of the Market Administrator shall be continued for the purpose of permitting the Market Administrator then functioning, or such other person as the Secretary may designate, to: (1) Reduce all assets to cash, (2) pay all costs of liquidation, (3) distribute all remaining cash on hand to the parties entitled to receive the same, and (4) ship all books and records to the Secretary for filing.*† [Art. X]

922.12 Liability of handlers. The liability of the handlers hereunder is several and not joint and no handler shall be liable for the default of any other handler.*† [Art. XI]

AID OF CIVIL AUTHORITIES AND PUBLIC RELATIONS: See Army: War Department, 10 CFR Chapter I.

AIDS, GIFTS, GRANTS, AND DONATIONS; CORPORATE HISTORY: See Transportation and Railroads, 49 CFR Part 150.

AIDS TO NAVIGATION: See Navigation and Navigable Waters, 33 CFR Part 402.

*†For statutory and source citations, see note to § 922.1.

TITLE 7—AGRICULTURE

- AIR MAIL:** See Civil Aviation, 14 CFR Part 90; Postal Service, 39 CFR Chapter I. Transportation and Railroads, 49 CFR Parts 102, 103.
- AIR NAVIGATION:** See Civil Aviation, 14 CFR Chapter I. Panama Canal, 35 CFR Part 5.
- AIRCRAFT:** See Army: War Department, 10 CFR Chapter II. Civil Aviation, 14 CFR Chapter I.
- AIRPORTS:** See Civil Aviation, 14 CFR Chapter I. Public Lands: Interior Department, 43 CFR Part 251.
- ALASKA AQUATIC MAMMALS OTHER THAN WHALES:** See Wildlife, 50 CFR Parts 241–242.
- ALASKA FISHERIES:** See Wildlife, 50 CFR Parts 201–229.
- ALASKA GAME COMMISSION: GUIDES, POISONS, AND LICENSES:** See Wildlife, 50 CFR Part 92.
- ALASKA GAME REGULATIONS:** See Wildlife, 50 CFR Part 91.
- ALASKA: INDIANS AND OTHER NATIVES:** See Indians, 25 CFR Part I. Public Lands: Interior Department, 43 CFR Part 67.
- ALASKA: INDIVIDUAL WILDLIFE REFUGES:** See Wildlife, 50 CFR Part 30.
- ALASKA: PUBLIC LANDS:** See Public Lands: Interior Department, 43 CFR Parts 51, 56, 60–82.
- ALASKA RADIO SERVICES.** See Telecommunication, 47 CFR Part 14.
- ALASKA: RAILROADS, TELEPHONE AND TELEGRAPH LINES:** See Territories and Insular Possessions, 48 CFR Part 5.
- ALCOHOL TAX UNIT, ESTABLISHMENT AND DUTIES:** See Internal Revenue, 26 CFR Part 171.
- ALCOHOLIC BEVERAGES:** See Intoxicating Liquors, 27 CFR Chapter I. Panama Canal, 35 CFR Part 6.
- ALIEN INDIVIDUALS, NONRESIDENT, AND FOREIGN CORPORATIONS, ETC., TAXATION OF:** See Internal Revenue, 26 CFR Part 7.
- ALIEN PROPERTY BUREAU:** See Judicial Administration, 28 CFR Part 4.

